

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

WATERKEEPER ALLIANCE, INC.,
SIERRA CLUB, CLEAN WATER
ACTION, and ENVIRONMENTAL
INTEGRITY PROJECT,

Plaintiffs,

V.

U.S. ENVIRONMENTAL PROTECTION
AGENCY,

Defendant.

Case No. 17-cv-9184

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiffs Waterkeeper Alliance, Inc., Sierra Club, Clean Water Action, and Environmental Integrity Project (collectively, “Plaintiffs”) assert violations of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, by Defendant United States Environmental Protection Agency (“EPA”) for failing to produce requested agency records concerning EPA’s reconsideration of, and postponement of compliance deadlines within, the Agency’s rule updating wastewater treatment standards for power plants (“Effluent Limitation Guidelines rule” or “ELG rule”).

2. Coal-fired power plants are by far the largest dischargers of toxic pollution in the United States, dumping billions of pounds of arsenic, selenium, mercury, and other dangerous pollutants into rivers, streams, and lakes across the United States every year. However, prior to

publishing the ELG rule in November 2015, EPA had not revised power plant wastewater treatment standards since 1982.

3. The 2015 ELG rule would require power plants to eliminate the vast majority of this pollution using affordable, state-of-the-art wastewater treatment technology, resulting in thousands of river miles that are safer to swim and fish in, and hundreds of cleaner water bodies that are vital drinking water sources. The effective date of the rule was January 4, 2016, but for the new, more stringent wastewater treatment standards, the rule required compliance “as soon as possible” on or after November 1, 2018, and “no later than” December 31, 2023.

4. This year, however, EPA under the new Administration has undertaken a series of actions to postpone the ELG rule’s compliance deadlines and begin a new rulemaking to reconsider the two most significant of the new standards for coal combustion wastewater. The new EPA Administration has made these deregulatory moves at the utility industry’s request, and particularly in response to an administrative petition for reconsideration of the rule that was filed by an industry trade association, the Utility Water Act Group (“UWAG”), on March 24, 2017.

5. On August 4, 2017, Plaintiffs submitted their FOIA request, seeking records since April 25, 2017 concerning EPA’s reconsideration of the ELG rule and postponement of its compliance deadlines.

6. Since the FOIA request was submitted, EPA has not provided any documents to Plaintiffs in response to the request.

7. EPA has failed to provide Plaintiffs with a complete and lawful response to, or determination of, their FOIA request within the timeframe required by FOIA.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

9. Venue is proper in this district because plaintiff Waterkeeper Alliance, Inc. resides and has its principal place of business in this judicial district. 5 U.S.C. § 552(a)(4)(B).

PARTIES

10. Plaintiff Waterkeeper Alliance, Inc. (“WKA”) is a nonpartisan, nonprofit organization headquartered in New York, New York uniting more than 300 Waterkeeper Organizations and Affiliates around the world and focusing citizen advocacy on issues that affect our waterways and water quality. Within the United States, WKA works with over 170 Waterkeeper Member Organizations and Affiliates to create and preserve drinkable, fishable, swimmable, and clean waterways. Communities nationwide look to WKA for critical information concerning, among other things, sources of pollution in their local waterways.

11. WKA has a proven ability to disseminate information quickly and effectively through various communication channels including publications, public interest litigation, educational programs, media initiatives, and its website. WKA’s website www.waterkeeper.org is updated regularly and draws thousands of visits per month. WKA also publishes *Waterkeeper Magazine*, a magazine on water-related environmental and public health subjects of current interest, which has an annual circulation of 590,000. WKA distributes email updates on water-related issues to approximately 30,000 subscribers each month, and information is also made available to the general public on WKA’s website. WKA also issues press releases and participates in press conferences and interviews with reporters.

12. Sierra Club was founded in 1892 and is the nation's oldest grassroots environmental organization. Sierra Club's national headquarters is located in Oakland, California. Sierra Club is a nonprofit, membership organization incorporated in California with more than 840,000 members in all 50 states and the District of Columbia. Sierra Club's purpose is to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments.

13. Sierra Club's Beyond Coal campaign is a major effort to replace dirty coal with clean energy by mobilizing grassroots activists in local communities to advocate for the retirement of old and outdated coal plants and to prevent new coal plants from being built. As part of its campaign, Sierra Club has prioritized its efforts to ensure that coal-fired power plants comply with the Clean Water Act and other environmental laws, and has an active communications, organizing, and litigation campaign to further these efforts.

14. The Beyond Coal campaign participates in dozens of agency and judicial proceedings concerning coal-fired power plants every year, has a large communications budget, and communicates weekly with tens of thousands of citizens. Campaign experts and attorneys use available information to develop reports, media materials, and litigation briefs that further educate the public and decision-makers. Through that campaign, Sierra Club has built an extensive national network of public organizations and individuals interested in these issues, and it communicates with them regularly. Sierra Club also disseminates information through its website, www.sierraclub.org.

15. Clean Water Action ("CWA") is a nonpartisan, nonprofit organization incorporated under the laws of the District of Columbia, and has more than 800,000 members

nationwide. CWA's mission includes the prevention of pollution in the nation's waters, protection of natural resources, and creation of environmentally-safe jobs and businesses. CWA has continuously worked to strengthen and preserve key drinking water protections and protect small streams and wetlands. With over one million members, volunteers, and seasoned professional staff, CWA has led hundreds of successful campaigns in dozens of states around the country.

16. CWA disseminates information on its website, www.cleanwateraction.org, by blogging and publishing monthly newsletters, reports, and scorecards on both state and national issues. CWA is therefore capable of making the information from this request available to at least one million people around the country, as well as to relevant members of Congress and other elected officials.

17. Environmental Integrity Project ("EIP") is a nonpartisan, nonprofit organization founded in 2002 by former EPA enforcement attorneys to advocate for more effective enforcement of environmental laws. EIP's three objectives are: to provide objective analysis of how the failure to enforce or implement environmental laws increases pollution and affects the public's health; to hold federal and state agencies, as well as individual corporations, accountable for failing to enforce or comply with environmental laws; and to help local communities in key states obtain the protection of environmental laws.

18. EIP advocates for laws to protect public health and the environment from air and water pollution from coal-fired power plants and other large sources of pollution. As part of its efforts to ensure effective enforcement of environmental laws, EIP participates in federal and state rulemakings related to water pollution from the utility industry and brings lawsuits to enforce the Clean Water Act on behalf of community and environmental groups that are harmed

by coal-fired power plant pollution. In addition, EIP uses public data obtained through FOIA requests to develop reports, media materials, and litigation briefs that educate the public and decision-makers, and achieve its objectives. EIP also disseminates information through its website, www.environmentalintegrity.org.

19. Plaintiffs routinely use FOIA to obtain information from federal agencies, which Plaintiffs' legal and scientific experts analyze in order to inform their members and the public about public health and environmental issues, such as the impacts of water pollution from coal-fired power plants and other large sources of pollution, as well as the governmental decisions (and influences on those decisions) that affect the amount of pollution that power plants and other large sources of water pollution discharge into our rivers, lakes, and streams. Plaintiffs regularly convey important information to their members and the public through publications and press releases, as well as by publicly releasing information and documents obtained through FOIA requests.

20. Plaintiffs bring this action on their own behalf and on behalf of their members. Plaintiffs and their members have been and continue to be injured by Defendant's failure to provide requested records within the timeframe mandated by FOIA. The requested relief will redress these injuries.

21. Defendant EPA is a federal agency within the meaning of FOIA, 5 U.S.C. § 552(f)(1), and has possession or control of the records Plaintiffs seek in this action.

LEGAL BACKGROUND

22. Enacted in 1966, the Freedom of Information Act was designed to "encourage public disclosure of information" in order to "ensure an informed citizenry." *Am. Civil Liberties Union v. Dep't of Def.*, 543 F.3d 59, 66 (2d Cir. 2008) (citations omitted). To this end,

FOIA requires agencies of the federal government to release, upon request, information to the public, unless one of nine specific statutory exemptions applies. 5 U.S.C. § 552(a)(3)(A). These exemptions are narrowly construed, and the agency bears the burden of establishing the applicability of each exemption as to each record for which it is claimed. *See Milner v. Dep't of Navy*, 562 U.S. 562, 565 (2011).

23. Upon receiving a FOIA request, an agency has twenty working days to respond by determining whether responsive documents exist and whether the agency will release them. 5 U.S.C. § 552(a)(6)(A); 40 C.F.R. § 2.104(a). An agency may delay an initial determination by ten working days only if the agency can demonstrate that it faces “unusual circumstances.” 5 U.S.C. § 552(a)(6)(B); 40 C.F.R. § 2.104(d). FOIA further requires agencies to make records themselves “promptly available” to requesting parties. 5 U.S.C. § 552(a)(3)(A).

24. If an agency withholds responsive records, in whole or in part, the burden is on the agency to prove that an exemption applies and that it outweighs FOIA’s policy of disclosure. *See, e.g.*, 5 U.S.C. § 552(a)(4)(B); *Halpern v. F.B.I.*, 181 F.3d 279, 287 (2d Cir. 1999).

25. Whenever an agency determines that a portion of a record should be withheld under one of FOIA’s exemptions, the agency must still release to the public any portions of that record that contain “reasonably segregable” non-exempt information. 5 U.S.C. § 552(b) (“Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.”).

26. If an agency makes an initial determination that it will deny a FOIA request in whole or in part, the requester is entitled to administratively appeal the determination. 5 U.S.C. § 552(a)(6)(A)(ii). EPA regulations require administrative appeals to be filed within thirty calendar days. 40 C.F.R. § 2.104(j). FOIA requires the agency to make a determination with

respect to an administrative appeal of a denial of a request within twenty working days. 5 U.S.C. § 552(a)(6)(A)(ii).

27. FOIA provides that the district court shall have jurisdiction “to enjoin [an] agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” 5 U.S.C. § 552(a)(4)(B).

28. FOIA and EPA’s regulations state that a requester is entitled to a waiver of fees associated with responding to a FOIA request when the information sought “is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l)(1). Further, an agency cannot assess fees against a requester if it does not respond to the request within the time established by FOIA. *See* 5 U.S.C. § 552(a)(4)(A)(viii).

29. FOIA permits the Court to “assess . . . reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.” 5 U.S.C. § 552(a)(4)(E).

FACTUAL BACKGROUND

30. On April 25, 2017, EPA published in the Federal Register an administrative stay of certain compliance deadlines in the ELG rule, pending EPA’s reconsideration of the ELG rule in response to petitions submitted by UWAG and the U.S. Small Business Administration. *See* Postponement of Certain Compliance Dates for Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category, 82 Fed. Reg. 19,005 (Apr. 25, 2017).

31. On August 4, 2017, Plaintiffs submitted a FOIA request to EPA seeking all records created, stored or received since April 25, 2017 concerning the reconsideration, and

postponement of compliance deadlines, of the ELG rule. Plaintiffs' request is attached as Exhibit A. Specifically, Plaintiffs asked that EPA release "(1) All records created, stored, or received by the EPA Administrator, any of the Administrator's staff, or the EPA Office of Water concerning reconsideration of the Steam Electric ELGs rule or postponement of its compliance deadlines; (2) All records reflecting communications between EPA (or the Department of Justice) and the Utility Water Act Group, the law firm Hunton & Williams LLP, and/or any other entity or individual representing an electric generating utility or the utility industry, concerning the Steam Electric ELGs rule, including reconsideration of the rule or postponement of its compliance deadlines; and (3) All records reflecting communications between EPA (or the Department of Justice) and the White House, the U.S. Small Business Administration, the Tennessee Valley Authority, or any other federal agency concerning the Steam Electric ELGs rule, including reconsideration of the rule or postponement of its compliance deadlines." Exhibit A at 1-2. Plaintiffs also requested a public interest fee waiver. *Id.* at 1, 3-8.

32. EPA received Plaintiffs' FOIA Request on August 4, 2017.

33. EPA initially responded to the request in a letter to Plaintiffs' counsel dated August 10, 2017, attached as Exhibit B. In that letter, EPA granted itself a 10 working-day extension of time to respond to the FOIA request, pursuant to 5 U.S.C. § 552(a)(6)(B) and 40 C.F.R. § 2.104(d), based on a finding of "unusual circumstances." Exhibit B.

34. Plaintiffs' counsel spoke with EPA staff on August 22, 2017 to clarify the custodians, search terms, and date range for the request and explore potential ways to narrow the request. An email from EPA documenting this conversation is attached as Exhibit C. During this conversation, Plaintiffs and EPA staff agreed on a list of records custodians whose records would be searched for responsive records, as well as a list of search terms. Exhibit C at Section

I. EPA staff stated that EPA would be stopping the processing clock for the FOIA request until it received Plaintiffs' clarification or modification related to the key words. Exhibit C at Section V.

35. Plaintiffs' counsel responded by email dated August 25, 2017, attached as Exhibit D, to propose additional search terms. In addition, Plaintiffs' counsel objected to EPA's contention that it was appropriate under the circumstances for EPA to find that the processing clock was stopped pending Plaintiffs' response concerning the proposed search terms. *See* Exhibit D.

36. EPA staff stated by email dated September 6, 2017, attached as Exhibit E, that EPA's position was that the processing clock on the FOIA request was restarted as of August 25, 2017, the date that Plaintiffs responded to EPA's email concerning search terms.

37. By letter dated September 15, 2017, attached as Exhibit F, EPA denied the Plaintiffs' public interest fee waiver request. The purported reason for the denial was that Plaintiffs "failed to demonstrate that the release of the information requested significantly increases the public understanding of government operations or activities." *Id.* The letter did not provide any additional explanation for the denial.

38. Plaintiffs' counsel last spoke with EPA staff on September 20, 2017. During that conversation, EPA staff informed Plaintiffs' counsel that EPA was in the process of gathering documents responsive to the request.

39. On October 13, 2017, Plaintiffs submitted an appeal of EPA's denial of its public interest fee waiver request. Plaintiffs' appeal is attached as Exhibit G.

40. In a letter to Plaintiffs dated November 6, 2017, attached as Exhibit H, EPA stated that it reviewed Plaintiffs' appeal and granted a fee waiver.

CLAIM FOR RELIEF

41. Plaintiffs re-allege and incorporate the allegations of all preceding paragraphs of this Complaint as if fully set forth herein.

42. By failing to produce records responsive to Plaintiffs' August 4, 2017 FOIA request, EPA has violated FOIA's mandate to "promptly" release agency records to the public within the timeframe required by the statute. *See* 5 U.S.C. § 552(a)(3)(A) & (a)(6).

43. Defendant EPA has wrongfully withheld the requested records from Plaintiffs.

44. Plaintiffs have exhausted the applicable administrative remedies.

45. Plaintiffs are entitled to obtain the requested records immediately at no cost.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request that this Court enter a judgment:

(1) declaring that Defendant EPA has violated FOIA by failing to provide all records responsive to Plaintiffs' FOIA request;

(2) ordering that Defendant EPA make all requested records available to Plaintiffs promptly and at no cost to Plaintiffs;

(3) retaining jurisdiction over this case to rule on any assertions by EPA that any responsive records, in whole or in part, are exempt from disclosure;

(4) awarding Plaintiffs' litigation costs and reasonable attorneys' fees in this action;
and

(5) ordering such other relief as the Court may deem just and proper.

DATED: November 22, 2017

Respectfully Submitted,

/s/ Thomas J. Cmar

Thomas J. Cmar (TC 8791)
Earthjustice
1101 Lake Street, Suite 405B
Oak Park, IL 60301
T: (312) 257-9338
E: tcmar@earthjustice.org

Mychal R. Ozaeta (to be admitted *pro hac vice*)
Earthjustice
1617 John F. Kennedy Blvd., Suite 1130
Philadelphia, PA 19103
T: (215) 717-4529
E: mozaeta@earthjustice.org

*Counsel for Plaintiffs Waterkeeper Alliance, Inc.,
Sierra Club, Clean Water Action, and
Environmental Integrity Project*

Exhibit A



August 4, 2017

VIA ELECTRONIC SUBMISSION

National Freedom of Information Officer
U.S. Environmental Protection Agency
<https://foiaonline.regulations.gov>

**RE: Freedom of Information Act Request Regarding Effluent Limitation
Guidelines for the Steam Electric Power Generating Point Source Category**

Dear National FOI Officer:

This is a request for information on behalf of Earthjustice, Waterkeeper Alliance, Inc., Environmental Integrity Project, Sierra Club, and Clean Water Action (collectively, "Public Interest Groups") pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Environmental Protection Agency's ("EPA") FOIA regulations, 40 C.F.R. § 2.107.

The Public Interest Groups also request a fee waiver for this request under 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107.

I. Records Requested

The Public Interest Groups request all records created, stored, or received since April 25, 2017 concerning EPA reconsideration, and postponement of compliance deadlines, of the "Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category" rule (the "Steam Electric ELGs rule") that was signed by the Administrator on September 30, 2015 and published in the Federal Register on November 3, 2015.

This request includes, but is not limited to, the following categories of records:

1. All records created, stored, or received by the EPA Administrator, any of the Administrator's staff, or the EPA Office of Water concerning reconsideration of the Steam Electric ELGs rule or postponement of its compliance deadlines;
2. All records reflecting communications between EPA (or the Department of Justice) and the Utility Water Act Group, the law firm Hunton & Williams LLP, and/or any other entity or individual representing an electric generating utility or the utility industry, concerning the Steam Electric ELGs rule, including reconsideration of the rule or postponement of its compliance deadlines; and

1101 LAKE STREET, SUITE 405B OAK PARK, IL 60634

T: 312.257.9338 TCMAR@EARTHJUSTICE.ORG WWW.EARTHJUSTICE.ORG

3. All records reflecting communications between EPA (or the Department of Justice) and the White House, the U.S. Small Business Administration, the Tennessee Valley Authority, or any other federal agency concerning the Steam Electric ELGs rule, including reconsideration of the rule or postponement of its compliance deadlines.

For purposes of this request, the term “records” means information of any kind, including, but not limited to, documents (handwritten, typed, electronic or otherwise produced, reproduced, or stored), letters, e-mails, facsimiles, memoranda, correspondence, notes, databases, drawings, graphs, charts, photographs, minutes of meetings, electronic and magnetic recordings of meetings, and any other compilation of data from which information can be obtained. As used herein, “and” and “or” shall be construed either conjunctively or disjunctively as required by the context to bring within the scope of these requests any information which might be deemed outside their scope by any other construction.

Further, for purposes of this request, the term “records” includes any personal email messages, telephone voice mails or text messages, and internet “chat” or social media messages, to the full extent that any such messages fall within the definition of “agency records” subject to FOIA, 5 U.S.C. § 552.

We remind you that FOIA requires that you respond within 20 working days of your receipt of this request, *see* 5 U.S.C. § 552(a)(6)(A)(i), and that that response must “at least indicate within the relevant time period the scope of the documents [you] will produce and the exemptions[, if any, you] will claim with respect to any withheld documents.” *Citizens for Responsibility and Ethics in Washington v. F.E.C.*, 711 F.3d 180, 182-83 (D.C. Cir. 2013).

We ask that you disclose this information as it becomes available to you without waiting until all of the communications and records have been assembled for the time period requested. The Public Interest Groups request electronic copies of the records whenever possible.

II. Claims of Exemption from Disclosure

If EPA regards any documents as exempt from required disclosure under the Freedom of Information Act, please identify each allegedly exempt record in writing, provide a brief description of that record, and explain the agency’s justification for withholding it. This explanation should take the form of a *Vaughn* index, as described in *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), and other related cases. If a document contains both exempt and non-exempt information, please provide those portions of the document that are not exempted from disclosure.

III. Fee Waiver

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107, the Public Interest Groups request that EPA waive all fees associated with responding to this request because the groups seek this information in the public interest and will not benefit commercially from this request. If EPA does not waive the fees entirely, the Public Interest Groups request that it reduce them to the extent possible.

FOIA provides that fees shall be reduced “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”¹ EPA’s FOIA regulations contain an identical requirement.² The U.S. Department of Justice (DOJ) has identified six factors to assess whether a requester is entitled to a waiver of fees under FOIA, and the D.C. Circuit and other Courts of Appeals reference and apply these factors.³ These factors are:

- A. Disclosure of the Information ‘is in the Public Interest Because it is Likely to Contribute Significantly to Public Understanding of the Operations or Activities of the Government.’
 - (1) **The subject of the request:** Whether the subject of the requested records concerns ‘the operations or activities of the government’;
 - (2) **The informative value of the information to be disclosed:** Whether the disclosure is ‘likely to contribute’ to an understanding of government operations or activities;
 - (3) **The contribution to an understanding of the subject by the general public likely to result from disclosure:** Whether disclosure of the requested information will contribute to ‘public understanding’; and
 - (4) **The significance of the contribution to public understanding:** Whether the disclosure is likely to contribute ‘significantly’ to public understanding of government operations or activities.

¹ 5 U.S.C. § 552(a)(4)(A)(iii).

² 40 C.F.R. § 2.107.

³ See, e.g., Stephen J. Markman, U.S. Dep’t of Justice, FOIA Update, Vol. VIII, No. 1, New Fee Waiver Policy Guidance at 3-10 (1987), *available at* http://www.justice.gov/oip/foia_updates/Vol_VIII_1/viii1page2.htm; *Judicial Watch, Inc. v. U.S. Dep’t of Justice*, 365 F.3d 1108, 1126 (D.C. Cir. 2004) (stating that “for a request to be in the ‘public interest,’ four criteria must be satisfied,” and citing agency’s multi-factor fee waiver regulation).

B. Disclosure of the Information ‘is Not Primarily in the Commercial Interest of the Requester.’

- (1) **The existence and magnitude of a commercial interest:** Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so
- (2) **The primary interest in disclosure:** Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is ‘primarily in the commercial interest of the requester.’⁴

The Public Interest Groups’ request complies with each of the factors agencies weigh in a fee waiver determination, as demonstrated below. If this information is not sufficient to justify a fee waiver, please contact us for further documentation before deciding upon the waiver request.

A. Public Interest Factor

The disclosure of this information is in the “public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.”⁵ The Public Interest Groups’ request complies with each of the criteria DOJ has identified for the public interest factor.

i. The request concerns the operations or activities of the government.

The Public Interest Groups seek information related to EPA’s reconsideration and postponement of compliance deadlines of the Steam Electric ELGs rule. Since EPA is an arm of the federal government, such EPA records plainly concern “operations or activities of the government.”⁶

ii. The disclosure is “likely to contribute” to an understanding of government operations and activities.

The records the Public Interest Groups have requested bear upon EPA’s pending internal review process concerning reconsideration of the Steam Electric ELGs rule and postponement of its compliance deadlines, as well as any communications between EPA and outside entities about those matters. On March 24, 2017, the Utility Water Act Group (“UWAG”) submitted a petition to EPA for reconsideration of the Steam Electric ELGs rule.⁷ The U.S. Small Business

⁴ Markman, *supra* note 3.

⁵ See 40 C.F.R. § 2.107(l)(1).

⁶ See *id.* § 2.107(l)(2)(i).

⁷ See <https://www.regulations.gov/document?D=EPA-HQ-OW-2009-0819-6478>.

Administration (“SBA”) submitted a second petition for reconsideration on April 5, 2017.⁸ On April 12, 2017, EPA informed UWAG and SBA that it would reconsider the rule and take action to postpone the rule’s compliance deadlines under the Administrative Procedure Act, 5 U.S.C. § 705 (“APA”).⁹ EPA subsequently published the APA action in the Federal Register, 82 Fed. Reg. 19,005 (Apr. 25, 2017), and later also published a proposed rule to postpone the compliance deadlines, on which it accepted public comment, 82 Fed. Reg. 26,017 (June 6, 2017).

However, it is not currently public knowledge as to the scope, timing, or substance of EPA’s reconsideration process, nor has EPA made public any communications with UWAG or SBA (and/or other outside entities) since informing them it would grant the petitions for reconsideration. Thus, disclosure is “likely to contribute” to public understanding of government operations and activities.¹⁰

iii. The information will contribute to the understanding of a reasonably broad audience of persons interested in the subject.

This information will contribute to the understanding of a reasonably broad audience of persons interested in the subject.¹¹ The general public is already following issues related to water pollution from coal-fired power plants, which has frequently been the focus of investigative reports by members of the media.¹² Since EPA first announced its reconsideration of the Steam Electric ELGs rule and postponement of its compliance deadlines, it has received significant critical scrutiny from members of the public and news media.¹³ Thus, the non-public

⁸ <https://www.regulations.gov/document?D=EPA-HQ-OW-2009-0819-6481>.

⁹ <https://www.regulations.gov/document?D=EPA-HQ-OW-2009-0819-6482>.

¹⁰ See 40 C.F.R. § 2.107(l)(2)(ii).

¹¹ See *id.* § 2.107(l)(2)(iii).

¹² See, e.g., Heather Rogers, ProPublica, *Lobbyists Bidding to Block Government Regs Set Sights on Secretive White House Office*, July 31, 2014, available at <http://www.propublica.org/article/lobbyists-bidding-block-government-regs-sights-set-secretive-white-house>; Bill Chameides, Nat’l Geographic Energy Blog, *Coal Ash Ponds: How Power Companies Get a ‘Bypass’ on Regulations Against Pollution*, Mar. 24, 2014, available at <http://energyblog.nationalgeographic.com/2014/03/24/coal-ash-ponds-how-power-companies-get-a-bypass-on-regulations-against-pollution/>; Charles Duhigg, N.Y. Times, *Cleansing the Air at the Expense of Waterways*, Oct. 12, 2009, available at <http://www.nytimes.com/2009/10/13/us/13water.html>.

¹³ See, e.g., Brady Dennis, Washington Post, *Trump administration halts Obama-era rule aimed at curbing toxic wastewater from coal plants*, Apr. 13, 2017, available at https://www.washingtonpost.com/news/energy-environment/wp/2017/04/13/trump-administration-halts-obama-era-rule-aimed-at-curbing-toxic-wastewater-from-coal-plants/?utm_term=.b6c11be54f03; Michael Biesecker, Detroit News, *EPA to undo tougher pollution limits on coal plants*, Apr. 14, 2017, available at <http://www.detroitnews.com/story/news/nation/2017/04/14/epa-undo-tougher-pollution-limits-coal-plants/100482394/>; Ian Johnston, The Independent, *Donald Trump’s plan to allow coal plants to poison rivers faces legal challenge*, May 4, 2017, available at <http://www.independent.co.uk/news/world/americas/us-politics/donald-trump-coal-power-plants-river-water-pollution-toxic-waste-us-environmental-protection-agency-a7717386.html>.

records concerning this topic that the Public Interest Groups are requesting will attract interest from a broad audience of Americans.

The Public Interest Groups are particularly able to ensure that the information requested will be disseminated to the general public.

Earthjustice is a non-profit public interest law organization dedicated to protecting the magnificent places, natural resources, and wildlife of this earth, and to defending the right of all people to a healthy environment.¹⁴ Earthjustice has made safeguarding the nation's waters one of its top priorities. To this end, Earthjustice has brought numerous lawsuits to enforce the Clean Water Act in the public interest. In light of its substantial legal expertise, Earthjustice is well-prepared to analyze and evaluate the records we receive pursuant to this request and assess them in the context of the statutory mandates of the Clean Water Act. In addition, Earthjustice has the "ability and intention" to convey this information to the public.¹⁵ Earthjustice can publicize information received from this request in its monthly electronic newsletter, which serves approximately 223,000 subscribers, and it can utilize its online action alert system to urge members of the public to contact policymakers and ask them to take action based on information received from this request; typically, 15,000 to 20,000 individuals respond to such alerts. Earthjustice's communications staff can disseminate newsworthy information obtained from this request to the media.

Waterkeeper Alliance ("WKA") has 178 local affiliates throughout the United States. Communities nationwide look to Waterkeeper Alliance for critical information concerning, among other things, sources of pollution in their local waterways. WKA has a proven ability to disseminate information quickly and effectively through various communication channels including publications, public interest litigation, educational programs, media initiatives, and its website. Waterkeeper Alliance's website, www.waterkeeper.org, is updated regularly and draws thousands of visits per month. WKA also publishes WATERKEEPER, a magazine on water-related environmental and public health subjects of current interest, which has an annual circulation of 130,000. "Currents" is WKA's electronic newsletter on water-related issues that is distributed by email to approximately 24,000 subscribers monthly and made available to the general public online. WKA also issues press releases and participates in press conferences and interviews with reporters. WKA routinely uses FOIA to obtain information from federal agencies that WKA's legal and scientific experts analyze in order to inform the public about a variety of issues, including water pollution, drinking water safety, and energy policy. WKA has demonstrated its ability to analyze and distribute information to a broad audience of interested people.

The Environmental Integrity Project ("EIP") is a non-profit, non-partisan public interest law organization that was founded to advocate for the effective enforcement of environmental laws

¹⁴ See <http://earthjustice.org/about>.

¹⁵ See, e.g., Markman, *supra* note 3.

that pertain to coal-fired power plants and other large sources of pollution. EIP's three objectives are to: (1) provide objective analysis of how the failure to enforce or implement environmental laws increases pollution and affects the public's health; (2) hold federal and state agencies, as well as individual corporations, accountable for failing to enforce or comply with environmental laws; and (3) help local communities in key states obtain the protection of environmental laws. EIP participates in federal and state rulemakings related to water pollution from the utility industry and brings lawsuits to enforce the Clean Water Act on behalf of community and environmental groups that are harmed by coal plant pollution. In addition, EIP uses public data to develop reports, media materials, and litigation briefs that educate the public and decision-makers, and achieve its objectives. For example, EIP, in coordination with the other Public Interest Groups and other partners, has released several reports documenting water pollution from coal-fired power plants.¹⁶ Most recently, EIP released a detailed report on the power plant wastewater loads, the adequacy of monitoring requirements in existing permits, the prevalence of overdue permit renewals, and the extent to which existing power plant discharges could meet the Steam Electric ELG rule's new pollution limits.¹⁷ EIP's reports are published on its website.

The Sierra Club is the nation's oldest and largest grassroots environmental organization, with more than 2.7 million members and supporters, including online activists and newsletter subscribers. Its website is highly trafficked and Sierra Club media and communications reach hundreds of thousands of people through an extensive digital communications network and online information system, print magazine, radio show, web videos, and news reports.

Clean Water Action is a non-profit, non-partisan public interest organization. One of the nation's largest grassroots environmental organizations, it was founded to protect the environment, health, economic well-being, and community quality of life by promoting safe water and preventing health threatening pollution. Clean Water Action has continuously worked to strengthen and preserve key drinking water protections and protect small streams and wetlands. With over one million members, Clean Water Action has led hundreds of successful campaigns in dozens of states around the country. Clean Water Action disseminates information on its website by blogging, publishing monthly newsletters, reports, and scorecards

¹⁶ EIP et al., *Selling Our Health Down the River: Why EPA Needs to Finalize the Strongest Rule to Stop Water Pollution from Power Plants* (June 17, 2015), *available at* http://earthjustice.org/sites/default/files/files/Selling%20Our%20Health%20Down%20The%20River_0.pdf; EIP et al., *Closing the Floodgates: How the Coal Industry is Poisoning Our Water and How We Can Stop It* (July 23, 2013), *available at* http://www.environmentalintegrity.org/news_reports/07_23_2013.php; EIP et al., *In Harm's Way: Lack of Federal Coal Ash Regulations Endangers Americans and their Environment* (Aug. 26, 2010), *available at* http://www.environmentalintegrity.org/news_reports/08_26_10.php; Earthjustice et al., *EPA's Blind Spot: Hexavalent Chromium in Coal Ash* (Feb. 1, 2011), *available at* <http://www.environmentalintegrity.org/documents/CoalAshChromeReportFINAL.pdf>.

¹⁷ EIP, *Toxic Wastewater from Coal Plants* (Aug. 11, 2016), *available at* <http://www.environmentalintegrity.org/wp-content/uploads/2016/11/Toxic-Wastewater-from-Coal-Plants-2016.08.11-1-1.pdf>.

on both state level and national issues. The organization is therefore capable of making the information from this request available to at least one million people around the country, as well as to relevant members of Congress and other elected officials.

The Public Interest Groups have the ability to digest and quickly disseminate information gleaned from FOIA requests to the general public. The Public Interest Groups will make any newsworthy information or documents received in response to this request publicly available and will use them as the bases for public comments and further action regarding these proposed permit renewals. Thus, the Public Interest Groups are uniquely well positioned to analyze and publicize the requested information.

iv. The information will contribute “significantly” to public understanding of government operations or activities.

The information the Public Interest Groups seek will contribute “significantly” to the ongoing public conversation about pollution from coal-fired power plants.¹⁸ None of the materials the groups have requested are now widely known (if they have been made public at all), yet they are essential to the public’s understanding of EPA’s reconsideration of the Steam Electric ELGs rule or postponement of its compliance deadlines, or any communications with outside entities concerning those issues. The extent to which EPA is actively reconsidering portions of the rule, and/or communicating with outside entities about them, is not currently public information. As discussed above, the Public Interest Groups will make any newsworthy information or documents received in response to this request publicly available and will use them as the bases for public advocacy, including in any future public proceedings concerning the Steam Electric ELGs rule. Releasing this information will, thus, significantly enhance public understanding of any EPA activities concerning reconsideration of the Steam Electric ELGs rule or postponement of its compliance deadlines.

B. Commercial Interest Factor

Public Interest Groups are non-profit organizations with no commercial, trade, or profit interests in the requested information. Public Interest Groups seek to use this information solely to inform the public and to support advocacy efforts around protecting human health and the environment through effective Effluent Limitations Guidelines and standards. Thus, there is no relevant commercial interest here, and the request is entirely in the public interest.

For all of the foregoing reasons, a fee waiver is warranted here under 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107. If EPA does not believe that the above information is sufficient to justify a fee waiver, please contact us for further documentation before deciding upon the waiver request.

¹⁸ See 40 C.F.R. § 2.107(l)(2)(iv).

Thank you for your assistance processing this request. Please contact me at the email or telephone number below if you have any questions or concerns about this request for information.

Sincerely,



Thomas Cmar
Earthjustice
(312) 257-9338
tcmar@earthjustice.org

Submitted on behalf of:

Earthjustice
Waterkeeper Alliance, Inc.
Environmental Integrity Project
Sierra Club
Clean Water Action

)URP
 6HCV
 7R
 6XEMFW

IRLBKT#-SD JRY
)ULGD\X L \$XJXWV !! + X L + !! 9I → L T T + L 30
 7KRPDV L &PDU
)2,\$ L 5HIXHWV- (3\$ +4+ L + !! 9I → + !! 9I !! L 9I → L 6XEPLWWHG

7KLV L PHVDJH L LV L VR L FRQILUP L \RXU L UHIXHWV L VXEPLWWHG L VSSOKHFWLQZSR L 5HIXHWV L 5HIXHWV L
 LQIRUPDMLRQ L LV L DV L IRCORZV L L

- x 7UDFNLQJ L IXPEHU L (3\$ +4+ L + !! 9I → + !! 9I !! L 9I →
- x 5HIXHWHU L IDPH L 7KRPDV L &PDU
- x 'DWH L 6XEPLWWHG L !! ← ↑ !! + ↓ L !! 9I →
- x 5HIXHWV L 6WDXV L 6XEPLWWHG
- x 'HVFULSWLRQ L 6HH L DWDFKHG

Exhibit B

1200 Pennsylvania Ave, NW
Mail Code 1105A
Washington, DC 20460

Thomas Cmar
Earthjustice
1101 Lake Street, Suite 405B
Oak Park, IL 60301

August 10, 2017

Dear Thomas Cmar,

Re: Freedom of Information Act Request No. EPA-HQ-2017-010217

Dear Mr./Ms. [Last name]:

This letter concerns the above-referenced Freedom of Information Act (FOIA) request, received by the U.S. Environmental Protection Agency (EPA or Agency) on [MONTH DAY, YEAR], in which you requested [INSERT directly what the FOIA request stated or accurately paraphrase description of requested records].

Given the scope of the request, EPA anticipates that [Explain the **unusual circumstance(s)** for requiring an extension, it must be one of these three reason(s):—"...the response will require significant amount of EPA's resources and time to search for, and appropriately examine the voluminous amount of records to complete this request" and/or "...to search for and collect the requested records from multiple EPA offices that are separate from the office processing the request" and/or "...the need to consultation with another agency having a substantial interest in the determination of the request."]

Pursuant to 40 C.F.R. §2.104(d), and extension of time required to respond to your request is necessary. The new due date is [NEW DATE], ten working days from [DATE OF ORIGINAL DEADLINE]. For an update on the status of your FOIA request, please call me at [TELEPHONE] or access FOIAonline.

If you would like to modify or narrow your request so that it may be processed sooner, please contact [POINT OF CONTACT], who can be reached at [insert contact info].

Sincerely,

Victor Farren
Office of the Administrator

5H⁻)UHGRP^L RI^L ,QIRUPDWRQ^L \$FW^L 5HIXHW^L 1R◀^L (3\$† +4† ⊥ !! ¶ → † !! ¶ !! ⊥ ¶ →^L
'HDU^L 0U◀^L &PDU^L

7KLVL CHWWHL FRQFHUQL WKHL DERYH UHILUHQFHGL)UHQRP\$FWL QZRSPLRHTXHWGL VXEPLWWHG VL WR L
(QYLURQPHQDO 3URWHFWLRQ \$JHQF\ L (3\$ RU \$JHQF\ L (RQ\$XJKQW ZLWK L R\$ UHIXHWHG
FRPPXQLFDMLRQL UHJDUGLQJ L (3\$ UHFRQLGHUMLRQGL DQG RSRWSPDILQWL GHGOLQHVL RI WKH L \geq (L
/LPLWDMRQL *XLGHOLQHVL DQG 6WDQGUGV IRU WKH 6WHP *HQHFWLQJ 3RZQV 6RXUFH L &DWHJRU L \neq L
 \geq 6WHP (HFWULF L (/ *VL UXOH \neq L

*LYHQ⁻ WKH⁻ VFRSH⁻ RI⁻ WKH⁻ UHIXHW⁻ (3\$⁻ DQWLFSDW⁻ WKD⁻FKLWIRZLODQKDFROOHFW⁻ WKH⁻ UHIXHW⁻
IURP⁻ PXOWSCH⁻ (3\$⁻ RIILFH⁻ WKD⁻ DUH⁻ VHSUDWH⁻ FURPDQWKH⁻ UHIXHW⁻

3XUVXDQW^L WR^L † !!^L &◀^L)◀^L 5◀^L Ü^L ⊥ ◀ ¶ !! † ♂ G◻^L ☼^L WEDQHMSROQVLRQ^L RIRXWLRPHXHXMXLUEG^L QHFHMD^L
QHZ^L GXH^L GDWH^L LV^L 6HSWHPEHU^L ¶ ↑ ☼^L ⊥ !! ¶ → ☼^L WDEHZEUNLOJ^L EDV¶ ¶ FUMP^L 6HSWH

, I ^ \ R X ^ Z R X G ^ O L N H ^ W R ^ P R G L I \ ^ R U ^ Q D U R Z ^ \ R X U D U H E X H S U R V I W K E W V R I Q H L E ^ S O H D V H ^ F R Q W D F W ^
) D U H O ^ ^ Z K R ^ F D Q ^ E H ^ U H D F K H G ^ D W ^ I D U H O ^ Y L F W R U # H S E ^ J R Y ^ R U ^ ♂ ^ ⊥ ^ !! ^ ⊥ ^ □ ^ ^ ↑ ^ † ^

Exhibit C

JURP JLSI ◀ OQQ#HSD◀ JRY
 6HQV 7XMGD\ ⚡ \$XJXWV ± ± ⚡ L ± !! ♢ → L | ♢ ↑ L 30
 7R 7KRPDV L &PDU
 6XEMFW (3\$+ +4+ ± !! ♢ → + !! ♢ !! ± ♢ → ⚡ L &ODULIFDMLRQ L DQG L ,QWLDOL 5HVSQMH

!! ← ↑ ± ± ↑ ± !! ♢ → L !! ↑ ↑ ↑ L 30 L
)2,\$ L 5HIXHW L (3\$+ +4+ ± !! ♢ → + !! ♢ !! ± ♢ → L

'HDU L OU◀ L &PDU L

7KDN L \RX L IRU L \RXU L)UHGRL RI L ,QIRUPDMLRQ L \$FW L UHIXHW L QV/KWK L CHRYH L UHILHQFHG L)UHG
 ,QIRUPDMLRQ L \$FW L ♂)2,\$ ◻ L UHIXHW ⚡ L UHFHLYHG L E\ L WKO L SURHFW L QULSRDQ L ♂ (3\$ L RU L \$JHQF\ L
 \$XJXW L !! | ⚡ L ± !! ♢ → L LQ L ZLFLK L \RX L UHIXHWG L

\$OO L UHFRUGV L VLQFH L \$SULO L ± ↑ ⚡ L ± !! ♢ → L FRQFHUQLQJ L DQG L SRVSRQVHQV L WRO FRPSOLDQFH L GHCO
 RI L WKH L ≥ (IIOXHQW L /LPLDMLRQV L *XLGHOLQHV L DQG L WIDP L QVFWUR L WKHU 6 *HQHDMLOJ L 3RLQW L 6RX
 &DWHJRU\ L ¥ L UXCH L ♂ WKH L ≥ 6WHP L (CHFWULF L (/V L UXCH ¥ ◻ ◀ L

♢ ◀ 5HFRUGV L FUHDWG ⚡ L WRUHG ⚡ L RU L UHFHLYHG L E\ L WKH DQ 3\$ RSGMQLWSDWQ L WUDWU ∂ V L WDI I ⚡ L
 2IILFH L RI L :DWH L FRQFHUQLQJ L UFRQMLGHUMLRQ L RI L WKH L /WIDP L (CHFWUL

± ◀ &RPPXQLFDMLRQV L EHWZHHQ L (3\$ L ♂ RU L WKH L 'HSDUWHQW L WKH L SWMLM L L DQ L \$FW L *URXS ⚡ L WKH L
 +XQW L L :LOOLDPV L //3 ⚡ L DQG L RU L DQ L RAKHU L HQSULW L QULJ L QDYLH L JHQHDMLOJ L XWLOLW
 XWLOLW L LQGXXW L ⚡ L FRQFHUQLQJ L WKH L 6WHP L (CHFWULF L (/V L UXCH L

┐ ◀ 5HFRUGV L UHICHFWLQJ L FRPPXQLFDMLRQV L EHWZHHQ L (3\$ L HQW L RAKH L XWSDW L DQG L WKH L :KLWH L +RXV
 8 ◀ 6 ◀ L 6PDOO L %XLQHV L \$GPLQLWUDMLRQ ⚡ L WKH L 7HQHWHW L BOCHDQ L \$XWU L IHGHUD L DJHQF\ L FRQ
 WKH L 6WHP L (CHFWULF L (/V L UXCH ◀ L

,◀ L &ODULIFDMLRQ L

2Q L \$XJXW L ± ± ⚡ L ± !! ♢ → L 'HQLVH L :DONHU L DQG L OLNH L WRR J ODDYD L FKH GEXVWGLDQV ⚡ L VDUFK L
 GDWH L UDQJH L IRU L WKLW L UHIXHW L DQG L H[SORUH L SRVSRQVHQV L UHIXHW L QDUR

(3\$ ∂ V L)2,\$ L UHIXODMLRQV L WDWH L

≥ :KHQYHU L SRVLECH ⚡ L \RXU L UHIXHW L VKRXG L LQFOXW L RQSHDERW L HQIRUPHFRUG L VRXJKW ⚡ L VXFK L
 GDWH ⚡ L WWOH L RU L QDPH ⚡ L DAKRU ⚡ L UHFLSLHQW L QZQG L VXMFW L RNDWH L QFOXGH L DQ L ILOH L GMLJQ
 GHMFULSWLRQV L IRU L WKH L UHFRUGV L WKDW L \RX L ZDQW L RX/KHU L PROHRSWKH L UHFRUGV L RU L WASH L RI L UH
 \RX L ZDQW ⚡ L WKH L PRUH L OLND L (3\$ L ZLOO L EH L DEONH L UHFRUG L UHVSQ L YRFDW L \RXU L UHIXHW ◻ ¥
 | !! L &◀)◀ 5◀ L Ü L ± ◀ ♢ !! ± ♂ F ◻ ◀ L

:H L DJUHG L RQ L WKH L IROORZLQJ L

'DWH L 5DQJH L \$SULO L ± ↑ ⚡ L ± !! ♢ → L WR L GDWH L RI L VDUFK L

&XWRGLDQV \$V^L ZH^L GLVFXWHG^L WKH^L UHFRUGV^L ORFDWLQ^L LV^L (3\$ ZH^L EDG^L W^L WKH^L &XWRGLDQV^L EH^L
LQ^L WKH^L 2IILFH^L RI^L :DWHU^L DQG^L WKH^L \$GPLQLWUDRU^L @V^L 2IILFH^L ◀^L

\$GPLQLWUDRU^L 2IILFH^L &XWRGLDQV^L

\$GPLQLWUDRU^L 3UXLWW^L

6DUDK^L *UHQZDOW^L

5\DQ^L -DFNRQ^L ^L

%\URQ^L %URZQ^L ^L

6DPDQKD^L 'UDYL^L ^L

/D\QH^L %DQJHWHU^L

'RQ^L %HQWRQ^L

0\URQ^L (EHO^L

+RCO\^L *UDYHV^L

'DYL^L 6FKQDUH^L

%ULWWDQ\^L %RCHQ^L

6KDQQRQ^L .HQQ\^L

'HUHN^L 7KUHWH^L

0LNH^L 6FRJ JDIDYD^L

2IILFH^L RI^L :DWHU^L &XWRGLDQV^L

6HDQ^L 5DPDFK^L

6FRWW^L :LOVRQ^L

5RQ^L -RUGQ^L

%HWW\^L 6RXWKHUODQG^L

5REHUW^L :RRG^L

-DQ^L 0DWXVJNR^L

0LNH^L 6KDSLUR^L

%HQLWD^L %HWW^L :RQJ^L

.H\ZRUGV L

'XULQJ L WKH L FDOO L ZH L DOVR L GLVFXVHG L SRWHQMLDO L NVH\ZRUGV L FUDSV L SRSRDUFK L IRU L HOHFWRQLF L DGGV L DGGWLRQDO L WHUPV L VR L WKH L VHDFK L FUDWHG L WHP L (RNEUSEHYURKXHW L ♂ (3\$ +4 + ± !! ¶ → + IRORZV L L

≥ 6WDP L (CHFWULF L 5XCH L ¥ L 25 L | 3DUW L | ± T ✕ | L Q5 L *XIGHIDQ L (CHFWULF L (IOWDP L (CHFWULF L /LPIWDLRQV L *XLGHOLQHV L DQG L 6WDQGDUGV L | L 25 L | SRZHU L SODQ L JXIGHIDQ L GHVXOSKXUL JDLRQ L | IRYHPEHU L ¶ ✕ L ± !! ¶ ← | ✕ L 25 L | 'HFHPEHU L T ¶ ✕ L (/!¥✕ L | 25 L > 3WHEZOWDP L ZIWKQLF L !! L 2 RI L |) *' ✕ | L RU L | JDLILFDWLRQ L @ ✕ L 25 L > 7UDQVSRGW L ZIWH L FHWWRQ L DFK L | ZRRU L | IO L DVK L @ SODQV ¥ L ZIWKQLQ L ¶ !! L ZRUGV L RI L ≥ (/ * ¥ @ L 25 L > ≥ : DWGZWRU ¥ ≥ FHWWRQ L DFK ¥ L ZRU L ≥ IO L DVK ¥ @

\$1' L

≥ → !! ↑ ¥ L 25 L ≥ SRWSRQHPHQV ¥ L 25 L ≥ WD \ ¥ L 25 L | FRPSOLDQFH L GDWV L 235 L ≥ FRBSOLDQFH L GHGOLQH L L

<RX L DJUHG L VR L UHYLHZ L WKHM L NH\ZRUGV L DQG L SURYLGH L DHHPDLOR VR 3\$' HQLVH L :DONHU L DQG L 0LN 6FRJ JIDIDY DONHU L 'HQLVH#HSD L JRDQFR JIDIDY L 0LFDHO (#HSD L JRY

, Q L DGGWLRQ L \RX L DJUHG L WKDW L (3\$ L GRHV L QRW L QVGVW L SURGXHQ L WHP UUXHPDLQJ L GRFNH L F WKRVL L UFRUGV L L

,, ◀ L 8QVXDO L &LUEXPWDQFH L DQG L (WQMLRQ L RI L 7LPH

3XUXDQW L VR L | !! L & ◀) ◀ 5 ◀ L Ü L ± ◀ ¶ !! | ♂ G □ QG L MR L HPMDLQXHW L WPHQVHV L UHVS L *LYHQ L UHIXHW L DV L ZULWHQ L (3\$ L DQWFLSDWHV L WKDW L WWHUHVSQVH L ZLOO L UHIX

x L VLJQLILFDQW L DPRXQW L RI L (3\$ ∂ V L UMRXUFHV L DQG L WQGL L DESURSLUDV IRUH DPIDQ L WKH L YROXPLQRXV L DPRXQW L RI L UFRUGV L VR L FRPSCHW L WKL V L UHIXHW L L

x L FROCHFWRQ L RI L WKH L UHIXHWHG L UFRUGV L IURP L PXOMXCHU L \$' VHSUDWH L MRP L WKH L RI ILFH L SURFHVVLQJ L WKH L UHIXHW ¥ L DQG ↑ RU L L

x L FRQXOWDLRQ L ZLWK L DQWKHU L DJHQF \ L KDYLQJ L D L VHQVXHQDO HQWUPLQW L RI L WKH L UHIXHW

,, , 3URFHVVLQJ L)HV

\$V L RI L \$XJXW L ± ± ✕ L ± !! ¶ → ✕ L WKH L (3\$ ∂ V L IDWLQDO L UHHPDLOR VR LQOQHQV LQJ L WKH L WKH L UHIXHW L WKDW L DFRPSDQLHG L WKH L)2, \$ L UHIXHW L L

, 9 ◀ 3XEOLFO L \$YDLODECH L , QIRUPDLRQ

7KH L IRORZLQJ L OLQN L SURYLGHV L SXEOLFO L DYDLODECH L IRXURHDLRQ FMDW LPPHGLDWHO L L

6WDP L (CHFWULF L 3RZHU L *HQHDLQJ L (IOXHQW L *XLGHOLQHV L ± !! ¶ ↑ L L)LQD

KWWSV ↑ ↑ ZZZ ◀ HSD ◀ JRY ↑ HJ ↑ WHP L HOHFWRQLF L SRZHU L JXIGHIDQ L HIOXHQW L ILQDO L UXOH

9 ◀ HW L 6WHSV

7KH L SURFHVVLQJ L FORFN L LV L WRSSHG L IRU L \RX L)2, \$ L UHIXHW RQWODZ L FDLRQ L RU L PRGLILFDWLRQ L UHODWHG L VR L WKH L NH L ZRUGV L ZH L GLVFXVHG L L

<RX^L PD\^L HPDLO^L 0LFKDHO^L 6FRJJD^L~~DDMPD~~^L~~DDW~~^L 0LFKDHO(#HSD^L J^LRU^L 'HQLVH^L :DONHU^L DW^L
~~ZDONHU~~^L ~~GHQLVH#HSD~~^L J^LZIWK^L \RXU^L UHVSROMH^L RU^L FRQDFW^L 'HQLVH^L :DONHU^L DWRX^L KDYH^L DQ^L \IXWKH^L
TXHWLROV^L , I^L ZH^L GR^L QRW^L UHFHLYH^L D^L UHVSROMH^L URP^L \RX^L E^L !! ~~SHSWPEHZH~~^L ZLOO^L FROMLCHU^L \
YRONQWULO^L \ ZIWKGDZQ^L 2QFH^L WKH^L UHIXHW^L LV^L ~~QNDQKHLSURZH~~^L VZOO^L \RU^L)2,\$^L UHIXHW^L DQG^L \
RX^L ZIWK^L DQ^L HWLDPDWH^L WLPHIUDPH^L IRU^L FRPSCHMLRONIXHW^L IRXRUDWLROV^L FRQHFHWHG^L WR^L WKLV^L UH^L
WKH^L IXWUHQ^L SOHDVH^L UHILUHOFH^L WKH^L)2,\$^L UHIXHW^L OXPEHU^L ^

\$GGLWRQDOO\⊛ ⊔ \RX⊔ PD\ ⊔ VHN⊔ DWLWDQFH⊔ IURP⊔ (3\$ DMWRQ2,ISV⊔ 3KEOLHLD#HSD⊔ JRY⊔ RU⊔ ♂ ⊔ !! ⊔
RU⊔ IURP⊔ WKH⊔ 2IILFH⊔ RI⊔ *RYHUQPHQW⊔ ,QIRUPDWRQ⊔ 6HXYLPHD\ ⊔ FROWHFW⊔ 2*⊔ 6⊔ LQ⊔ DQ⊔ \ ⊔ RI⊔ WKH⊔ I
ZD\V ⊔ E\ ⊔ PDLO⊔ ⊛ ⊔ 2IILFH⊔ RI⊔ *RYHUQPHQW⊔ ,QIRUPDWRQ⊔ 6HXYLPHD\ ⊔ DQGL#FRUGV⊔ SGPLQLWUDWRQ
5RRP⊔ ⊔ ↑ ⊑ !! ⊛ ⊔ ← ⊔ ⊑ !! ⊔ SGHOSKL⊔ 5RDC⊔ ⊛ &ROCHJH⊔ 3DUN⊔ ⊛ RUJLV#QUL⊔ ⊛ JRY⊔ ⊔ WHHSHKQH⊔ HPDL⊔ ⊔
↑ → → !! ⊔ RU⊔ ♂ ← → → □ ⊔ ⊔ ← ⊔ ⊔ ⊔ ⊔ ⊔ ⊔ ← ⊔ RU⊔ ID⊔ ⊛ ⊔ ♂ ⊔ !! ⊔ ⊔ □ ⊔ → ⊔ ⊑ ⊔ ↑ → ⊔ ⊔

, I^L \RX^L ZLK^L WR^L UHXHW^L LQIRUPDMLRQ^L FRQQHFWHG^L ~~WKH^L WKXV~~UHTXHSODVQ^L UHILHQFH^L WKH^L)2, \$^L OXPEHU^L

6LQFHUO\ ☼ L

'HOLVH^L \$◀^L :DONHU^L

Exhibit D

JLRP 7KRPDV^L &PDU
 GQW JULD\X^L \$XJXW^L ± ↑ X^L ± !! q → L ± T T^L 30
 7R ZDCHU GQLVH#HSD JRY^L VFRJJDDYD PLKCHH#HSD JRY
 6XEMFW):^L (3\$ +4 ± !! q → + !! q !! ± q → X^L &CDULIFDWRQ^L DQG^L ,QWLDQ^L 5HVSQMH

Dear Ms. Walker and Mr. Scozzafava,^L

Thank you for discussing this request with me on Tuesday. After reviewing EPA's proposed search strings, we would like^L to propose some additional strings:^L

- x "FGD"
- x "FGDW"
- x "BATW"
- x "flue gas desulfurization"
- x "bottom ash"
- x "fly ash"
- x "scrubber"
- x "subbituminous" or "sub bituminous"
- x "selenium" within ten words of "power plant"
- x "Utility Water Act Group" within ten words of "ELG"
- x "UWAG" within ten words of "ELG"
- x "Hunton" within ten words of "ELG"
- x "Small Business Administration" within ten words of "ELG"
- x "SBA" within ten words of "ELG"
- x "stay" within ten words of "ELG"
- x "reconsider" within ten words of "ELG"
- x "reconsideration" within ten words of "ELG"
- x "stay" within ten words of "Steam Electric"
- x "reconsider" within ten words of "Steam Electric"
- x "reconsideration" within ten words of "Steam Electric"
- x "UWAG" within ten words of "Steam Electric"
- x "Utility Water Act Group" within ten words of "Steam Electric"
- x "Hunton" within ten words of "Steam Electric"
- x "Small Business Administration" within ten words of "Steam Electric"
- x "SBA" within ten words of "Steam Electric"

Also, so there is no future misunderstanding of our position, we do not agree with the statement in your email that^L "[t]he processing clock is stopped for your FOIA request until we receive your clarification or modification related to the^L key words we discussed." We do not believe that EPA has the authority under FOIA to grant itself additional time to^L respond to our FOIA request other than that expressly provided by the statute. There is no provision in FOIA that^L authorizes an agency to grant itself additional time to respond to a request in this manner. We submitted this request^L on August 4, 2017. Taking into account the "unusual circumstances" extension of time that the Agency has invoked, by^L my count EPA's response is due by September 11, 2017. If we do not receive a lawful response from EPA to our FOIA^L request on or before September 11, 2017, we reserve the right to seek legal remedies to compel a lawful response.^L

Please do not hesitate to contact me if you have any questions or would like to discuss this request further. Thank you^L for your prompt attention to this email.^L

L
Best, L
L
Thom Emar L
Earthjustice L L
(312) 257 9338 (cell) L
tcmar@earthjustice.org L
L
L
L

From: zipf.lynn@epa.gov [mailto:zipf.lynn@epa.gov]
Sent: Tuesday, August 22, 2017 5:15 PM
To: Thomas Cmar
Subject: EPA-HQ-2017-010217, Clarification and Initial Response
L

!! ← ↑ ± ± ↑ ± !! ¶ → L !! ↑ ↑ ↑ L 30 L
)2, \$ L 5HIXHW L (3\$ +4 ± !! ¶ → ± !! ¶ !! ± ¶ → L

'HDU L 0U L &PDU L

7KDN L \RX L IRU L \RXU L)UHGRP L RI L ,QIRUPDLRQ L \$FW L UHIXHW L QV/KW L OHRYH L UHILUHQFH L)UHG
,QIRUPDLRQ L \$FW L ♂)2, \$ L UHIXHW L UHFHLYHG L E L WKO L SURMFWLRQ L UHIXHW L ♂ (3\$ L RU L \$JHQ L
\$XJXW L !! ± ¶ L ± !! ¶ → L LQ L ZKLFK L \RX L UHIXHW L

\$OO L UHFRUGV L VLQFH L \$SULO L ± ↑ ¶ L ± !! ¶ → L FRQFHUQLQJ L DQG L SRVWFRPHQ L FRPSOLDQH L GHCO
RI L WKH L ≥ (IOXHQ L /LPLWDLRQ L *XLGOLQV L DQG L WHPD L OHFWULF L WKHU L *HQHDMHQJ L 3RLQ L 6RX
&DWHJRU L ¥ L UXCH L ♂ WKH L ≥ 6WDP L (CHFWULF L (/ *V L UXCH ¥ □ ◀ L

¶ ◀ L 5HFRUGV L FUDWGH L WRUHG L RU L UHFHLYHG L EU L WKH L (3RI L SRVWFRPHQ L WUDWU L V L WDI L
2ILFH L RI L :DWH L FRQFHUQLQJ L UHFRQLGHUMLRQ L RI L WKH L *WHPD L CHFWUL

± ◀ L &RPPXQLFDLRQ L EHZHQ L (3\$ L ♂ RU L WKH L 'HSDUWLQJ L WKH L SANKH L DWHQ L \$FW L *URXS L WKH L
+XWRQ L L :LOOLDPV L //3 L DQG L RU L DQ L RAKHU L HQSULPHQJ L QDYLH L JHQHDMHQJ L XWLOLW
XWLOLW L LQGXXU L FRQFHUQLQJ L WKH L 6WDP L (CHFWULF L (/ *V L UXCH L

± ◀ L 5HFRUGV L UHCHFWLQJ L FRPPXQLFDLRQ L EHZHQ L (3\$ L RU L WKH L 'HSDUWLQJ L WKH L :KLW L +RXV
8◀ 6◀ L 6PDOO L %XLQHV L \$GPLQWUDLRQ L WKH L 7HQH L WHPD L WHPD L IHGUDO L DJHQ L FRQ
WKH L 6WDP L (CHFWULF L (/ *V L UXCH L

,◀ L &ODULILFDLRQ L

2Q L \$XJXW L ± ± ¶ L ± !! ¶ → L 'HQLVH L :DONHU L DQG L OLNH L WRR L FODD L FODD L FODD L VDUFK L
GDWH L UDQH L IRU L WKLW L UHIXHW L DQG L H L SRUH L SRVWFRPHQ L UHIXHW L QDUR

(3\$ L V L)2, \$ L UHIXODLRQ L WDW L

≥ :KHQYHU L SRVLEOH L \RXU L UHIXHW L VKRXG L LQFOXGLQJ L DERW L HQIRUPHFRUG L VRXJKW L VFK L
GDWH L WWH L RU L QPH L DWKRU L UHFLSLHQW L QZQ L VWHFWERQW L LQFOXGH L DQ L ILQH L GMLJQ
GHMFLSMLRQ L IRU L WKH L UHFRUGV L WDW L \RX L ZDQ L RX L PRUH L WHPD L UHFRUGV L RU L WSH L RI L UH
\RX L ZDQ L WKH L PRUH L OLNH L (3\$ L ZLOO L EH L DEWHWUHQW L UHFRUGV L WDW L \RXU L UHIXHW L ¥
± !! L &)◀ 5◀ L Ü L ± ◀ ¶ !! ± ♂ F◀ L

:H^L DJUHG^L RQ^L WKH^L IRCORZLQJ^L

'DWH^L 5DQJH^L \$SULO^L ⊥ ↑ ☼^L ⊥ !! ¶ →^L WR^L GDWH^L RI^L VHDUFK^L

&XWRGLDQV^L \$V^L ZH^L GLVFXVHG^L WKH^L UHFRUGV^L ORFDWLQJ^L LV^L (3\$ ZH^L ~~ODGNH~~ WKH^L &XWRGLDQV^L EH^L
LQ^L WKH^L 2ILFH^L RI^L :DWHU^L DQG^L WKH^L \$GPLQLWUDWU^L ∂ V^L 2ILFH^L

\$GPLQLWUDWU^L 2ILFH^L &XWRGLDQV^L

\$GPLQLWUDWU^L 3UXLWW^L

6DUDK^L *UHQZDOW^L

5\DQ^L -DFNVRQ^L

%\URQ^L %URZQ^L

6DPDQKD^L 'UDYLV^L

/D\QH^L %DQJHWHU^L

'RQ^L %HQWRQ^L

0\URQ^L (EHO^L

+ROO\^L *UHDYHV^L

'DYL^L 6FKQDUH^L

%ULWWDQ\^L %RCHQ^L

6KDQQRQ^L .HQQ\^L

'HUHN^L 7KUHWH^L

0LNH^L 6FRJJDIDYD^L

2ILFH^L RI^L :DWHU^L &XWRGLDQV^L

6HDQ^L 5DPDFK^L

6FRWW^L :LOVRQ^L

5RQ^L -RUGQ^L

%HWW\^L 6RXWKHUODQG^L

5REHW^L :RRG^L

-DQ^L 0DWXVJNR^L

0LNH^L 6KDSLUR^L
$$\frac{1}{d} \text{HQLWD} \perp \frac{1}{d} \text{HWT} : \text{RQJ} \perp$$

L

.H\ZRUGV L

'XULQJ[⊥] WKH[⊥] FDOO[⊥] ZH[⊥] DOVR[⊥] GLVFXWHG[⊥] SRWHQMLDO[⊥] NYHZRUOM[⊥] FUDYS[⊥] SRSRDUFK[⊥] IRU[⊥] HOHFWRURQLF[⊥]
 DGGV[⊥] DGGMLRQDO[⊥] WHUPV[⊥] WR[⊥] WKH[⊥] VHDFK[⊥] FUDWHG[⊥] WHP[⊥] (NEWUSEHYRXHW[⊥] ♂ (3\$+ +4+ ⊥ !! ¶ → +
 IROORZV[⊥] ⊥ ⊥

$$\begin{aligned} &\geq 6\text{WHP}^{\perp}(\text{CHF}\text{WULF}^{\perp}5\text{XOH}^{\circ}\neq^{\perp}25^{\perp}|3\text{DUW}^{\perp}|\perp\top\otimes|\text{QS}^{\perp}*\text{XIGHDIQHV}(\text{CHF}\text{WULF}^{\perp}5^{\perp}|\text{I}16\text{WHP}^{\perp}(\text{CHF}\text{WULF}^{\perp} \\ &/\text{LPLWDM}\text{LRQV}^{\perp}*\text{XLGHOLQHV}^{\perp}\text{DQG}^{\perp}6\text{WDQGDUGV}^{\perp}|\text{L}25^{\perp}|\text{SHYU}^{\perp}|\text{SCEV}^{\perp}|\text{XIKOLQDV}^{\perp}\text{GHVXOSKXULJ}\text{DMLRQ}^{\perp} \\ &|\text{IRYHPEHU}^{\perp}\text{q}\otimes^{\perp}\perp!!\text{q}\leftarrow|\otimes^{\perp}25^{\perp}|\text{'HFHPEHU}^{\perp}\top\text{q}\otimes^{\perp}(\neq\text{q}\otimes^{\perp}\top|25^{\perp})>\text{DWHZDWHDP}^{\perp}\text{ZIKHQU}^{\perp}\text{q}!!|\text{L}2 \\ &\text{RI}^{\perp}|\text{)'}^{\perp}\otimes^{\perp}|\text{RU}^{\perp}|\text{JDVLILFDMLRQ}^{\perp}|\otimes^{\perp}25^{\perp}>\text{UDQVSRQW}^{\perp}\text{KIDHU}^{\perp}\text{EKWRPQ}^{\perp}\text{DKK}^{\perp}|\text{ZRRU}^{\perp}|\text{IO}\backslash^{\perp}\text{DVK}^{\perp}|\text{@} \\ &\text{SODQW}^{\perp}|\text{ZLWKLQ}^{\perp}\text{q}!!|\text{ZRUGV}^{\perp}\text{RI}^{\perp}\geq(/*\neq\text{@}^{\perp}25^{\perp})>>:\text{DWGZDRI}^{\perp}\neq\geq\text{EKWRPQ}^{\perp}\text{DKK}^{\perp}\neq\text{ZRU}^{\perp}\geq\text{IO}\backslash^{\perp}\text{DVK}^{\perp}\neq \end{aligned}$$

\$1' L

$\geq \rightarrow !! \uparrow \mathbb{Y}^L 25^L \geq \text{SRWSRQHPHQW} \mathbb{Y}^L 25^L \geq \text{WD} \setminus \mathbb{Y}^L 25^L \mid \text{FRPSOLDQFH}^L \text{GDW} \setminus \mathbb{Y}^L 25^L \geq \text{FRRSOLDQFH}^L$
 $\text{GHD} \text{COLOH} \mid^L$

~~RX~~^L ~~DJUH~~^G ~~WR~~^L ~~UHYL~~^Z ~~WKMH~~^L ~~NH~~^Z ~~ZRUG~~^V ~~DQG~~^L ~~SURL~~^G ~~YLDH~~^H ~~DFDL~~^R ~~WR~~^S ~~'HQL~~^V ~~H~~^L ~~:DON~~^H ~~DQG~~^L ~~OLN~~^{6FR} ~~J~~^D ~~DIDY~~^D ~~DONH~~^D ~~'HQL~~^V ~~#HSD~~^D ~~J~~^R ~~DQG~~^R ~~J~~^D ~~DIDY~~^D ~~OLFK~~^D ~~HO~~^D ~~(#HSD~~^D ~~'JRY~~^D

,Q^L DGGWLRQ^Q ^L \RX^L DJUHG^L WKDW^L (3\$^L GRHV^L QRW^L ~~QVHG~~WAA^H STURXHQ^L VWRUUXOHPDNLQJ^L GRFNHW^L I
WKRVRH^L UHFRUGV^L ^L

.,◀^L 8QXVDO^L &LUFXPWDQFH^V^L DQG^L (|WHQMRQ^L RI^L 7LPH

3XUVXDQW^L WR^L † !!^L &◀^L)◀^L 5◀^L Ü^L † ◀^L ¶ !!^L † ♂ G◻ ◻G^{||} DR^{||} HPMQVLRQXIRW^{||} WMPHQVRWVUWSR^L *LYHQ
UHTXHW^L DV^L ZULWWHQ◻^L (3\$^L DQWFLSDWV^L WKDW^L WWHUHVSROMH^L ZLOO^L UHTX

x^L VLJQLILFDQ^L DPRXQ^L RI^L (3\$ ∂V^L UMRXUFHV^L DQG^L WQGH^L DESURSLUDV^L HVVH^L DPIDQ^L WKH^L
YROXPLORXV^L DPRXQ^L RI^L UHFRUG^L WR^L FRPSCHWH^L WKLV^L UHIXHW^L

x^L FROCHFWLRQ^L RI^L WKH^L UHIXHWWG^L UHFRUGV^L IURP^L PXOMLSCHUEU^L VHSUDW^L MRP^L WKH^L RIILFH^L
SURFHWLOJ^L WKH^L UHIXHWW^L DQG^L RU^L

x[⊥] FROXOWDLRQ[⊥] ZLWK[⊥] DQWKHU[⊥] DJHQF\[⊥] KDYLQJ[⊥] D[⊥] VAEOWDWHU[⊥] CHMPLDWRQ[⊥] RI[⊥] WKH[⊥] UHIXHW

3URFHVLQJ)HVV

\$V^{\perp}\$ RI\$^{\perp}\$ \$XJXW^{\perp}\$ \$\bot\bot\$ \$\odot\$ \$^{\perp}\bot\$!! \$\P \rightarrow \odot\$ \$^{\perp}\$ WKH\$^{\perp}\$ (3\$\partial\$ V\$^{\perp}\$ IDWLQDCH IJHHGHV\$^{\perp}\$ RWLQQIRUPDMQJ\$^{\perp}\$ WKH\$^{\perp}\$ WKH
UHXHW\$^{\perp}\$ WDW\$^{\perp}\$ DFFRPSDLHG\$^{\perp}\$ WKH\$^{\perp}\$)2.\$^{\perp}\$ UHXHW\$^{\perp}\$ \$\blacktriangleleft\$ \$^{\perp}\$

,943XEO LFO\ L SYDLODECH L ,QIRUPEWLRQ

7KH\ IRCORZLOJ\ OLQN\ SURYLGHV\ SXEOLFO\ DYDLODECH\ ~~IRXRUHIDWLF~~ ~~HO\FNNKDW~~ LPPHGLDWHO\

6WHP^L (CHFWLF^L 3RZHU^L *QHJUDLQJ^L (IIOXHQ^L *XLGHOLQH^L XGH^L + !! ¶ ↑^L) LQD

KWWSV ↑ ↓ ZZZ◀ HSD◀ JRY↑ HJ↑ WHDP+ HCHFWULF+ SRZHU+ JKHGHDQW+ H IONQW+ ILQDO+ UXOH

9◀H[W^L 6WHSV

7KH^L SURFHMVLQJ^L FORFN^L LV^L WRSSHG^L IRU^L \RXU^L)2,\$^L ~~SHHIXHWWRXQWIKODZH~~ LFDMLRQ^L RU^L PRGLILFDMLRQ^L
UHDWHG^L WR^L WKH^L NH^L ZRUGV^L ZH^L GLVFXVHG◀^L

<RX^L PD\^L HPDLO^L 0LFKDHO^L 6FRJJDWYDJDWYD◀ 0LFKDHO(#HSD◀ JRU^L 'HQLVH^L :DONHU^L DW^L
ZDONHU◀ GHQLVH##HSD◀ JZLWK^L \RXU^L UHVSQMH^L RU^L FRQDFW^L 'HQLVH^L :DONHU^L DWRX^L KDYH^L DQ^L IXWKH
TXHMLRQV◀^L ,I^L ZH^L GR^L QW^L UHFHLYH^L D^L UHVSQMH^L IURP^L \RX^L E\!! SHWPEHZH^L ZLOO^L FROMLGHU^L \
YRONQWULO\^L ZIWKGDZQ◀^L 2QFH^L WKH^L UHIXHW^L LV^L ~~QDQMLHSHRZHVZQO~~ \RU^L)2,\$^L UHIXHW^L DQG^L
\RX^L ZLWK^L DQ^L HMLPDWHG^L WLPHIUDPH^L IRU^L FRPSCHMLRQHIXHW^L IRXRUZMLRQWRFRQHFHWHG^L WR^L WKLVL^L UH
WKH^L IXWXUH◊^L SCHDVH^L UHILHQFH^L WKH^L)2,\$^L UHIXHW^L QXPEHU◀^L

\$GGLWRQDOO\◊^L \RX^L PD\^L VHN^L DVLWDQFH^L IURP^L (3\$^L ~~DWRQ2SN3XHOHSD~~ JRU^L ♂ ± !! ± □^L ↑ ±
RU^L IURP^L WKH^L 2IILFH^L RI^L *RYHUQPHQW^L ,QIRUPDMLRQ^L 6HXLHH◊^L ~~FRQDFW~~ 2*,<6^L LQ^L DQ^L RI^L WKH^L I
ZD\V^L E\^L PDLO◊^L 2IILFH^L RI^L *RYHUQPHQW^L ,QIRUPDMLRQ^L 6HXLHH◊^L ~~FRQDFW~~ 2*,<6^L LQ^L DQ^L RI^L WKH^L I
5RRP^L ± ↑ ¶ !! ◊^L ← ± ¶ !!^L \$GHOSKL^L 5RDG◊^L &ROOHJH^L 3DQJLVLQCEU◊^L JRY^L WHHSHKROH◊^L ♂ ± HPDE◊^L
↑ → → !!^L RU^L ♂ ↔ ↔ ↔ □^L ± ← ± ± ± ± ←^L RU^L ID[◊^L ♂ ± !! ± □^L → ± ¶ ± ↑ → ±^L

,I^L \RX^L ZLWK^L WR^L UHIXHW^L LQIRUPDMLRQ^L FRQHFHWHG^L ~~WKH~~ WKXUHUHIXSHDVH◊^L UHILHQFH^L WKH^L)2,\$^L
QXPEHU◀^L

6LQFHUHO◊^L

'HQLVH^L \$◊^L :DONHU^L

L

Exhibit E

↑ 8 6 & Ü ↑ ↑ ± ♂ D ♂ □ ♂ \$ □ ♂ LL □ L DOORZYH WZKLEUHQZDEWRJ WRSRUMKMLRQRENDVRQDE
 UHIXHWHG^L IURP^L D^L)2,\$^L UHIXHWHU^L ,^L KDYH^L UHWDZWO^L WKH KDSRFN WRQGSURYLG^L \RX^L ZLWK^L PRI
 FRQFHUQLQJ^L WKH^L HWMLPDWG^L GDWH^L RI^L FRPSCHMLRQ^L IRUVRQXUDVHTXKHWHVPRUH^L LQIRUPDMLRQ^L IURP^L
 WHFKQLFDO^L WHDP^L L

%HWW^L L

'HQLVH^L \$^L :DONHU^L

± !! ± ↑ ± ↑ ± ↑ ± !! L L

L

L

)URP^L 7KRPDV^L &PDU^L DLOWR WFPDU#HDUWKMKWLFH^L RUJ@

6HQW^L)ULGD^L \$XJXW^L ± ↑ ♂ L ± !! ¶ → L ± T T^L 30^L

7R^L :DONHU^L 'HQLVH^L 'HQLVH#HSD^L JRY^L 6FRJJDIDYD^L 0LHKERDJDIDYD^L 0LHFKDHO(#HSD^L JRY^L

6XEMHFW^L): (3\$+4± ± !! ¶ → ± !! ¶ !! ± ¶ → ♂ L &CDULILFDMLRQ^L DQG^L ,QLWDO^L SHVSRQVH^L

L

'HDU^L 0V^L :DONHU^L DQG^L 0U^L 6FRJJDIDYD^L L

L

7KDQN^L \RX^L IRU^L GLVFXVLQJ^L WKLVL^L UHIXHW^L ZLWK^L PH^L BQFLXHQD\ 3\$ \$WHSURSRVHG^L VHDUFK^L VWULQ

ZRXOG^L OLNH^L WR^L SURSRVH^L VRPH^L DGGLWLRQDO^L VWULQJV^L L

L

x^L ≥) * ' ¥^L

x^L ≥) * ' : ¥^L

x^L ≥ % \$ 7 : ¥^L

x^L ≥ IOXH^L JDV^L GHVXOIXULJDMLRQ¥^L

x^L ≥ ERWRP^L DMK¥^L L

x^L ≥ IO\^L DMK¥^L L

x^L ≥ VFUXEEHU¥^L

x^L ≥ VXEELWXLQRXV¥^L RU^L ≥ VXE^L ELWXLQRXV¥^L

x^L ≥ VHOHQLXP¥^L ZLWKLQ^L WHQ^L ZRUGV^L RI^L ≥ SRZHU^L SODQW¥^L

x^L ≥ 8WLQW\^L :DWHU^L \$FW^L *URXS¥^L ZLWKLQ^L WHQ^L ZRUGV^L RI^L ≥ (/ * ¥^L

x^L ≥ 8 : \$ * ¥^L ZLWKLQ^L WHQ^L ZRUGV^L RI^L ≥ (/ * ¥^L

x^L ≥ +XQWRQ¥^L ZLWKLQ^L WHQ^L ZRUGV^L RI^L ≥ (/ * ¥^L

x^L ≥ 6PDOO^L %XVLQHVV^L \$GPLQLWUDMLRQ¥^L ZLWKLQ^L WHQ^L ZRUGV^L RI^L ≥ (/ * ¥^L

x^L ≥ 6/\$ ¥^L ZLWKLQ^L WHQ^L ZRUGV^L RI^L ≥ (/ * ¥^L

x^L ≥ WD\ ¥^L ZLWKLQ^L WHQ^L ZRUGV^L RI^L ≥ (/ * ¥^L

x^L ≥ UHFRQMLGHU¥^L ZLWKLQ^L WHQ^L ZRUGV^L RI^L ≥ (/ * ¥^L

x^L ≥ UHFRQMLGHUWLRQ¥^L ZLWKLQ^L WHQ^L ZRUGV^L RI^L ≥ (/ * ¥^L

x^L ≥ WD\ ¥^L ZLWKLQ^L WHQ^L ZRUGV^L RI^L ≥ 6WHP^L (CHFWULF¥^L

x^L ≥ UHFRQMLGHU¥^L ZLWKLQ^L WHQ^L ZRUGV^L RI^L ≥ 6WHP^L (CHFWULF¥^L

x^L ≥ UHFRQMLGHUWLRQ¥^L ZLWKLQ^L WHQ^L ZRUGV^L RI^L ≥ 6WHP^L (CHFWULF¥^L

x^L ≥ 8 : \$ * ¥^L ZLWKLQ^L WHQ^L ZRUGV^L RI^L ≥ 6WHP^L (CHFWULF¥^L

x^L ≥ 8WLQW\^L :DWHU^L \$FW^L *URXS¥^L ZLWKLQ^L WHQ^L ZRUGV^L RI^L ≥ 6WHP^L (CHFWULF¥^L

x^L ≥ +XQWRQ¥^L ZLWKLQ^L WHQ^L ZRUGV^L RI^L ≥ 6WHP^L (CHFWULF¥^L

x^L ≥ 6PDOO^L %XVLQHVV^L \$GPLQLWUDMLRQ¥^L ZLWKLQ^L WHQ^L ZRUGV^L RI^L ≥ 6WHP^L (CHF

x^L ≥ 6/\$ ¥^L ZLWKLQ^L WHQ^L ZRUGV^L RI^L ≥ 6WHP^L (CHFWULF¥^L

L

\$OVR^L VR^L WKHUH^L LV^L QR^L IXWXUH^L PLVXQGHUWDQGLQH^L ER^L RW^L SRUWLRQZLWK^L ZWKH^L WDWHPHQW^L LQ^L \

WKDW^L ≥ W@KH^L SURFHVVLQJ^L FORFN^L LV^L WRSSHG^L IRUQWIXZH)2,\$^L UHIXHWHU^L FODULILFDMLRQ^L RU^L PH

UHODWH^L WR^L WKH^L NH^L ZRUGV^L ZH^L GLVFXVHG^L ¥^L :H3ERKQW^L WHEUDWKRUMW^L XQGH^L)2,\$^L WR^L JU

DGGLWLRQDO^L WLPH^L WR^L UHVSRG^L WR^L RXU^L)2,\$^L UHIXHWHU^L W@KH^L WDWXWH^L 7KHU

SURYLVLRQ^L LQ^L)2,\$^L WKDW^L DWKRULJHV^L DQ^L DJHQF\^L LWRQDQWLPDWH^L UHVSRG^L WR^L D^L UHIXHW^L LQ

PDQQHU^L :H^L VXEPLWWHG^L WKLV^L UHIXHW^L RQ^L \$XJXW^L R^L DFFRXQ^L WKH^L ZDQXQEDQWLUFXPWDOFHV^L H^L [WQVLRQ^L RI^L WLPH^L WKDW^L WKH^L \$JHQ^L KDV^L LQYRNG^L EANSROM^L FRQW^L QBS^L E^L 6HSHWPEHU^L ¶¶^L ZH^L GR^L QRW^L UHFHLYH^L D^L ODZIXO^L UHVSROM^L IURP^L (3\$^L WR RQXRU^L) E^L RUH^L XHSHWPEHU^L ¶¶^L UHMUYH^L WKH^L ULJKW^L WR^L VHN^L CHJO^L UHPHGLHV^L WSRQ^L D^L ODZIXO^L UH^L

30CHDM^L GR^L QRW^L KHVLDWH^L WR^L FRQWDFW^L PH^L LI^L \RRU^L KZKMGCEQOLNIXHWRQWVFXV^L WKL^L UHTXHW^L L^L
7KDN^L \RX^L IRU^L \RXU^L SURPSW^L DWHQMLRQ^L WR^L WKL^L HPDLO^L L^L

041100 L

7KRP^L & PDU^L
$$(\text{DUKMXWLFH})^L \quad L$$

♂ T 91 ± 10 L ± 10 ↑ → + T T ← L ♂ FHCO ± 10 L

WFPDU#HDOVKM\WLFH<L-RUJ

L

L

L

)URP 4LSI◀ O\QQ#HSD◀ ~~LOWR~~ 1LSI◀ O\QQ#HSD◀ JRY

6HQV L 7XMGD\ ☼ L \$XJXW L ⊥ ⊥ ☼ L ⊥ !! ¶ → L ↑ ¶ ↑ L 30 L

7R^L 7KRPDV^L &PDU^L

6XEMHFW^L (3\$| +4| + !! ¶ → + !! ¶ !! + ¶ → ☼^L &CDULILFDWLRQ^L DQG^L ,QLWLD^L 5HVSROMH^L

$$!! \leftarrow \updownarrow \perp \perp \updownarrow \perp !! \mathfrak{P} \rightarrow \perp !! \uparrow \uparrow \uparrow \perp 30 \perp$$

2, \$ 5HIXHW (3\$ +4 + !! ¶ → + !! ¶ !! + ¶ → L

'HDU^L OU^L &PDU^L

7KDQN⁻ \RX⁻ IRU⁻ \RXU⁻)UHGRP⁻ RI⁻,QIRUPDMLRQ⁻\$FW\UHXHWWC\KWK\OENRYH\ UHIHUHQFHG⁻)UHG
,QIRUPDMLRQ⁻\$FW[♂])2,\$□⁻ UHIXHWX[♀] UHFHLYHG⁻E\WOD\$URWHFWLRQLSDPDQ⁻♂(3\$⁻RU⁻\$JHQF\
\$XJXW⁻!!|⊗⁻⊥⁻!!¶→⁻LQ⁻ZKLFK⁻\RX⁻UHIXHWWG⁻

\$OO[⊥] UHFRUGV[⊥] VLOFH[⊥] \$SULO[⊥] ⊥ ↑ ☼[⊥] ⊥ !! ¶ →[⊥] FROFHUQLOJ[⊥] DQG\$S\$RWSRQWIBHQLWHRQ[⊥] FRPSOLDQFH[⊥] GHCC[⊥]
RI[⊥] WKH[⊥] ≥ (IIOXHQW[⊥] /LPDWMRQV[⊥] *XLGHOLQH[⊥] DQG[⊥] ~~WMDPGLCHFWUR~~[⊥] WKZHU6 *HQHJMLQJ[⊥] 3RLQW[⊥] 6RXI[⊥]
&DWHJRU[⊥] ∄[⊥] UXCH[⊥] ♂ WKH[⊥] ≥ 6WHP[⊥] (CHFWULF[⊥] (/ *V[⊥] UXCH ∄ □ ◀[⊥]

¶ ◀ ⌞ 5HFRUGV⌞ FUHDWGO⌞ WRUHG⌞ RU⌞ UHFHLYHG⌞ EU◊WKIDQ(3SR|SQRHQ\WIDMQLWUDWRU◊V⌞ WDIIO⌞
2IILFH⌞ RI⌞ :DWHU⌞ FROFHOLOJ⌞ UHFROMLGHUMLRQ⌞ RI⌞ FKX|◊WHDXCHCHFUL

⌞ ◀ ⌞ &RPPXQLFDMLRQV⌞ EHWZHHQ⌞ (3\$⌞ ♂ RU⌞ WKH⌞ 'HSDUWPHQWKRI⌞ 8XQVWH⌞ :DWEQ⌞ \$FW⌞ *URXS⌞ ⌞ WKH⌞
+XQWRQ⌞ ⌞ :LOOLDPV⌞ //3⌞ ⌞ DQG⌞ RU⌞ DQ⌞ \ RWKHU⌞ HQSULPHQRLQJ⌞ LQDYLGHEDULF⌞ JHQHUDMLQJ⌞ XWLQW
XWLQW⌞ LOGXWU\⌞ FROFHUOLQJ⌞ WKH⌞ 6WHDPL⌞ (OHFWULF⌞ (/ *V⌞ UXOH⌞

T ◀ ◀ ◀ 5HFRUGV◌ UHICHFWLQJ◌ FRPPXQLFDMLRQV◌ EHVZHHQ◌ (3HQV◌ RRU◌ WKKWU◌ FHSUWDQG◌ WKH◌ :KLWH◌ +RXV◌
 8◀ 6◀ ◌ ◌ 6PDOO◌ %XVLQHV◌ SGLQLWUDMLRQ◌ ◌ WKH◌ 7HQQHWWH◌ 9DCHDQ◌ \$XWRLU◌ IHGHUD◌ DJHQF◌ ◌ FRQ◌
 WKH◌ 6WHD◌ (CHFWULF◌ (/◌*V◌ UXCH◌ ◌

◀ L & O D U L I L F D W R Q L

2Q^L \$XJXW^L ⊥ ⊥ ☼^L ⊥ ⊥ !! ¶ →^L 'HQLVH^L :DONHU^L DQG^L 0LNH^L WRR] JODIDM^L FWEHGFVWRRGLQV☼^L ⊥ VHDUFK^L
GDWH^L UDQJH^L IRU^L WKLV^L UHTXHW^L DQG^L H[SORUH^L SRVWOMED^L ZHTXVWRR ⊥ QDUR

(3\$ ∂ V^L)2,\$^L UHJXODMLRQV^L WDWH^L

≥ :KHQHYHU^L SRWLCH^L \RXU^L UHIXHW^L VKRXOG^L LQFOXGLRQSHDERW^L HQIRUPUFRUG^L VRXJKW^L VXFK^L GDWH^L WWOH^L RU^L QDPH^L DWKRU^L UHFLSLHQWNRZQ^L VXMFWERDWHUQFOXGH^L DQ\^L ILCH^L GMLJQD^L GHMFULSMRQV^L IRU^L WKH^L UHFRUG^L WKDW^L \RX^L ZDQ\ RXKEUHPROHFWSHAKHUFUFRUG^L RU^L W\SH^L RI^L UH^L \RX^L ZDQ\ WKH^L PRUH^L OLND^L (3\$^L ZLOO^L EH^L DEOHWRUHHQGLUHVSRO\ORFDW^L \RXU^L UHIXHW^L ¥
 † !!^L &◀)◀ 5◀^L Ü^L † ◀ ¶ !!^L † ♂ F◀^L

:H^L DJUHG^L RQ^L WKH^L IRCORZLQJ^L

'DWH^L 5DQH^L \$SULO^L † ↑ ☼^L † !! ¶ →^L WR^L GDWH^L RI^L VHDFK^L

&XWRGLDQV^L \$V^L ZH^L GLVFXVHG^L WKH^L UHFRUG^L ORFDWLQJ^L LV^L (3\$^L ZLOO^L DEOHWRUHHQGLUHVSRO\ORFDW^L WKH^L &XWRGLDQV^L EH^L LQ^L WKH^L 2IILFH^L RI^L :DWHU^L DQG^L WKH^L \$GPLQLWUDWU^L ∂ V^L 2IILFH^L

\$GPLQLWUDWU^L 2IILFH^L &XWRGLDQV^L

\$GPLQLWUDWU^L 3UXLWW^L

6DUDK^L *UHQZDOW^L

5\DQ^L -DFNVRQ^L

%\URQ^L %URZQ^L

6DPDQKD^L 'UDYLV^L

/D\QH^L %DQJHUWHU^L

'RQ^L %HQWRQ^L

0\URQ^L (EHO^L

+RCO\^L *UDYHV^L

'DYL^L 6FKQDUH^L

%ULWWDQ\^L %RCHQ^L

6KDQQRQ^L .HQQ\^L

'HUH^L 7KUHH^L

0LNH^L 6FR]JDIDYD^L

2IILFH^L RI^L :DWHU^L &XWRGLDQV^L

6HDQ^L 5DPDFK^L

6FRWW^L :LOVRQ^L

5RQ^L -RUGDQ^L

%HWW^L 6RXWKHUCDQG^L

5REHW^L :RRG^L

-DQ^L 0DWXV]NR^L

0LNH^L 6KDSLUR^L

%HQLWD^L %HWW^L :RQJ^L

L

.H\ZRUGV^L

'XULQJ^L WKH^L FDOO^L ZH^L DOVR^L GLVFXVHG^L SRWHQMLDO^L NH\ZRUGV^L FUDISV^L SDRSRDUFK^L IRU^L HOHFWURQLF^L DGGV^L DGGMLRQDO^L WHUPV^L WR^L WKH^L VHDFK^L FUDWHG^L WHBP^L (RNEUSEHMYRXXH^L ♂ (3\$+ +4+ + !! ¶ → + IROCRZV^L L

≥ 6WHP^L (CHFWULF^L 5XCH^L ¥^L 25^L | 3DUW^L | + T ✕ | L Q^L *XIGHDP^L (CHFWULF^L | IOWHDP^L (CHFWULF^L /LPLWMLRQV^L *XLGHOLQH^L DQG^L 6WDQGDUGV^L | L 25^L | SHAVU^L | SCDQV^L | JXIGHOLQDV^L GHVXOSKXULJDMLRQ^L | IRYHPEHU^L ¶ ✕^L + !! ¶ ← | ✕^L 25^L | 'HFHPEHU^L T ¶ ✕^L (/ * ¥ ✕^L T | 25^L > 1WZOWHDP^L ZIWKHQLF^L !! L 2 RI^L |) * ✕^L | L RU^L | JDMILFDMLRQ^L @ ✕^L 25^L > 7UDQVSRQW^L ZIDHU^L ERWRPQ^L DVK^L | ZRRU^L | IO^L \ DVK^L | @ SCDQV¥^L ZIWKQL^L ¶ !! L ZRUGV^L RI^L ≥ (/ * ¥ @^L 25^L > ≥ :DWGZVRU^L ¥ ≥ ERWRPQ^L DVK ¥ ZRU^L ≥ IO^L \ DVK ¥ (

\$1^L

≥ → !! ↑ ¥^L 25^L ≥ SRWSRQHPHQW¥^L 25^L ≥ WD\ ¥^L 25^L | FRPSOLDQFH^L GDWH¥^L 25^L ≥ FRRBSOLDQFH^L GHDCOLQH^L L

<RX^L DJUHG^L WR^L UHYLHZ^L WKMH^L NH\ZRUGV^L DQG^L SURYLGH^L DHHHFDLOR^L WR 3\$'HQLVH^L :DONHU^L DQG^L 0LN 6FRJJDIDYD^L DONHU^L 'HQLVH#HSD^L JRDQGRJJDIDYD^L 0LFKDHO(#HSD^L JRY

,Q^L DGGMLRQ^L \RX^L DJUHG^L WKDW^L (3\$^L GRHV^L QW^L QWGWXW^L SURGXHQ^L WHFRUUXCHPDNLQJ^L GRFNHW^L F WKRWH^L UFRUGV^L L

,,◀^L 8QXVDO^L &LUEXPWDQFH^L DQG^L (JWHQLRQ^L RI^L 7LPH

3XUVXDQW^L WR^L | !! L &◀)◀ 5◀ L Ü^L + ◀ ¶ !! | ♂ G □ QG^L DR^L HPMQMLRQXHW^L WPHQWHVWUVR^L *LYHQ^L UHIXHW^L DV^L ZULWHQ^L (3\$^L DQWFLSDWHV^L WKDW^L WHHUHVSRQVH^L ZLOO^L UHIX

x^L VLJQLILFDQW^L DPRXQW^L RI^L (3\$^L ∂ V^L UMRXUFHV^L DQG^L WQGL^L DSRSDUDH^L OVRU^L DPDQ^L WKH^L YROXPLQRXV^L DPRXQW^L RI^L UFRUGV^L WR^L FRPSOHWH^L WKLV^L UHIXHW^L

x^L FROCHFWRQ^L RI^L WKH^L UHIXHWHG^L UFRUGV^L IURP^L PXOMSCHEU^L \$'HSDUDH^L MRP^L WKH^L RIILFH^L SURFHVVLQJ^L WKH^L UHIXHW¥^L DQG^L RU^L

x^L FRQVXOWMLRQ^L ZLWK^L DQWKHU^L DJHQF^L \ KDYLQJ^L D^L VHQVXHQ^L GHQWPLQW^L RI^L WKH^L UHIXHW

,,3URFHVVLQJ^L)HV

Exhibit F



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENVIRONMENTAL INFORMATION

SEP 15 2017

Mr. Thomas Cmar
Earthjustice
1101 Lake Street, Suite 405B
Oak Park, IL 60301

RE: Request Number EPA-HQ-2017-010217

Dear Mr. Cmar:

This is in response to your fee waiver request in connection with the above referenced Freedom of Information Act request.

We have reviewed your submission and based on the information provided, we are denying your request for a fee waiver. You have failed to demonstrate that the release of the information requested significantly increases the public understanding of government operations or activities. As a result of you failing to meet the above criteria, accordingly, there is no need to address the remaining prongs of the fee waiver criteria. The Office of Water (OW) will be responding to your information requests. You have been placed in the "other" fee category and will be charged for the costs of search time and duplication excluding the first two hours of search time and the first 100 pages of duplication. If the estimated costs exceed \$25.00, OW will contact you regarding the cost of processing your requests and seek an assurance of payment. They will be unable to process your requests until they receive your assurance of payment.

You may appeal this denial for a fee waiver by email at hq.foia@epa.gov, or by mail to the National Freedom of Information Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue. If you are submitting your appeal by hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001. Your appeal must be in writing, and it must be received no later than 90 calendar days from the date of this letter. The Agency will not consider appeals *received* after the 90-calendar-day limit. Appeals received after 5:00 pm EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope,

if applicable, should be marked "Freedom of Information Act Appeal." Additionally, you may seek dispute resolution services from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD 20740-6001; email, ogis@nara.gov; telephone, (202) 741-5770 or (877) 684-6448; or fax, (202) 741-5769.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry F. Gottesman", written over the word "Sincerely,".

Larry F. Gottesman
National FOIA Officer

)URP JLSI ◀ O\QQ#HSD◀ JRY
 6HQV)ULGD\◊ L 6H\$WFEU L ◊ ↑ ◊ L ⊥ !! ◊ → L → T ↑ L 30
 7R 7KRPDV L &FDJ
 6XEMFW)2,\$ L)HH L :DLYHU L 'LVSRLWLRQ L 5HDFK+G L IRU L (3\$ ⊕ +4 ⊕ ⊥ !! ◊ → ⊕ !! ◊ !! ⊥ ◊ →

<RXU L UHIXHW L IRU L)HH L :DLYHU L IRU L WKH L)2,\$ L UHIXHW L (3\$ ⊕ +4 ⊕ ⊥ !! ◊ → ⊕ !! ◊ !! ⊥ ◊ →
 IRU L WKLV L UHIXHW L DUH L DV L IRCORZV L L

x 5HIXHW L &UHDWG L RQ L !! ◊ ◊ ↑ !! ⊕ ↑ ⊥ !! ◊ →
 x)HH L :DLYHU L 'LVSRLWLRQ L 5HDMRQ L &ULWULD L QRW L PHW◊
 x 5HIXHW L /RQ L 'HMFULSWLRQ L \$OO L UHFRUGV L VLQFH L \$SUDDJ L (3\$ L L UHFRQVLGHUDWRQ L DQG
 SRWSRQHPHQW L RI L FRPSOLDQFH L GHGOLQHV L RI L WKH L RQ\ L L XHQLQJ L HPHVMDL L 6WDQGDUGV L IRU L V
 6WHDV L (CHFWULF L 3RZHU L *HQHUDLQJ L 3RLQW L 6RXUFH L &DWHU L 6WHDV L XQHFWULF L (/ *V L UXCH ¥ ◊ ◊ ◊

◊ ◊ 5HFRUGV L FUHDWG L WRUHG L RU L UHFHLYHG L E\ L WKH DQ 3\$ REGMQLWSDMRQ L WUDWU ◊ V L W
 (3\$ L 2IILFH L RI L :DWHU L FRQFHUQLQJ L UHFRQLGHUDMRQ L RMULWKH L 6WHDV L CH

⊥ ◊ &RPPXQLFDMRQ L EHVZHHQ L (3\$ L ♂ RU L WKH L 'HSDUPHQW L WKH L \$XVWLQ L L DQG L \$FW L *URXS L
 ODZ L ILUP L +XWRQ L L :LOOLDPV L //3◊ L DQG L RU L DQ\ YLWKHU L UHSDMRQV L LQ L HOHFWULF L
 JHQHUDLQJ L XWLQW L RU L WKH L XWLQW L LQGXXW L ◊ P L RQFHUQLQJ L WKH L XH

T ◊ 5HFRUGV L UHCHFWLQJ L FRPPXQLFDMRQ L EHVZHHQ L (3\$ L HQHU L WKH L XVWLQW L DQG L WKH L :KLW L
 +RXVH L WKH L 8◊ 6◊ L 6PDOO L %XVLQHVV L \$GPLQLWUDMRQ L WKH L XHFWLQW L RQD DQ L RAKHU L IH
 DJHQF L FRQFHUQLQJ L WKH L 6WHDV L (CHFWULF L (/ *V L UXCH L L

Exhibit G



>Ã
ALASKA CALIFORNIA FLORIDA MID-PACIFIC NORTHEAST NORTHERN ROCKIES
NORTHWEST ROCKY MOUNTAIN WASHINGTON, D.C. INTERNATIONAL

October 13, 2017

VIA E-MAIL

Larry F. Gottesman
National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
(202) 566-1667
hq.foia@epa.gov

Re: FREEDOM OF INFORMATION ACT APPEAL FOR FEE WAIVER DENIAL;
REQUEST NO. EPA-HQ-2017-010217

Dear Mr. Gottesman,

On behalf of Earthjustice, Waterkeeper Alliance, Inc., Environmental Integrity Project, Sierra Club, and Clean Water Action (collectively, “Public Interest Groups”), I write to appeal the United States Environmental Protection Agency’s (“EPA’s”) denial of a fee waiver on the above-captioned request for documents under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”) and EPA’s FOIA Regulations, 40 C.F.R. § 2.107.

I. Background

On August 4, 2017, the Public Interest Groups filed the above-captioned FOIA request with EPA, seeking all records since April 25, 2017 created, stored, or received by EPA, or reflecting communications with other agencies or outside entities concerning EPA reconsideration, and postponement of compliance deadlines, of the “Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category” rule (the “Steam Electric ELGs rule”). *See* Appendix A. The letter contained a fee waiver request that explained why the Public Interest Groups are entitled to a waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l). *Id.* at 3-8.

By letter dated September 15, 2017, EPA denied the Public Interest Groups’ fee waiver request. Appendix B. The purported reason for the denial was that the Public Interest Groups “failed to demonstrate that the release of the information requested significantly increases the public understanding of government operations or activities.” *Id.* The September 15 letter did not provide any additional explanation for the denial.

1101 Lake Street, Suite 405B Oak Park, IL 60301
T. 312.257.9338 tcmar@earthjustice.org www.earthjustice.org

This appeal is timely, having been made within 30 days of the Public Interest Groups' receipt of EPA's fee waiver denial.

II. Discussion

EPA's denial of the Public Interest Groups' fee waiver request is unlawful. Consistent with FOIA's requirement for a fee waiver, the disclosure requested here would be "likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(1)(2)(ii). Courts have repeatedly held that "the public interest exception should be *viewed in an expansive manner*." *Judicial Watch v. Dep't of Energy*, 310 F. Supp. 2d 271, 291 (D.D.C. 2004) (emphasis added); *see also Judicial Watch v. Rossotti*, 326 F.3d 1309, 1315 (D.C. Cir. 2003) [hereinafter *Rossotti*]. Although EPA bases its denial of the fee waiver request on only one of the criteria in the Agency's FOIA regulations¹, as discussed in the initial request and below, the Public Interest Groups have met all of the fee waiver criteria.

A. The subject matter of the records, in the context of this request, specifically concerns identifiable operations or activities of government.

Public Interest Groups meet the first factor under EPA regulations because "the subject of the requested records concerns 'the operations or activities of the government.'" 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(1)(2)(i). The original letter requests information, as well as any communications with other agencies or outside entities, concerning EPA reconsideration, and postponement of compliance deadlines, of the Steam Electric ELGs rule. The operations or activities of the government at issue include: EPA collection of data concerning EPA reconsideration, and postponement of compliance deadlines, of the Steam Electric ELGs rule; and EPA communications with other agencies or outside entities concerning EPA reconsideration, and postponement of compliance deadlines, of the Steam Electric ELGs rule. Since EPA is an arm of the federal government, the subject of the request plainly concerns "the operations or activities of the government." *Id.*; *see also Citizens for Responsibility & Ethics in Washington v. U.S. Dep't of Health & Human Servs.*, 481 F. Supp. 2d 99, 107-08 (D.D.C. 2006) [hereinafter *CREW*]; *Judicial Watch v. Dep't of Transp.*, Civ. No. 02-566-SBC, 2005 WL 1606915, at *3-4 (D.D.C. July 7, 2005) [hereinafter *Judicial Watch*].

¹ Because the denial letter only listed a failure to demonstrate that the release of the information requested would "significantly [increase] the public understanding of government operations or activities" as grounds for denial, App. B, EPA has arguably conceded that requesters have met remaining criteria for a fee waiver. *See, e.g., Friends of the Coast Fork v. United States DOI*, 110 F.3d 53, 55 (9th Cir. 1997) ("On judicial review, we cannot consider new reasons offered by the agency not raised in the denial letter") (citations omitted); *see also* The United States Department of Justice Guide to the Freedom of Information Act, Fee Waivers at 119 (2009), *available at* <http://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/fee-waivers.pdf> ("To the extent that an agency in its fee waiver analysis does not consider a factor or factors addressed by the requester in its request, courts generally have construed that factor as not at issue and thus conceded.").

B. The records to be disclosed are “likely to contribute” to an understanding of specific government operations or activities.

As explained in the initial FOIA request, disclosure of the requested records is “likely to contribute to an understanding” of government activities. 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l)(2)(ii). The Public Interest Groups are only requesting records that are not already publicly available. This disclosure will shed light on EPA’s internal review process concerning reconsideration of the Steam Electric ELGs rule and postponement of its compliance deadlines, as well as any communications between EPA and outside entities about those matters. It is not currently public knowledge as to the scope, timing, or substance of EPA’s reconsideration process, nor has EPA made public any communications with UWAG or SBA (and/or other outside entities) other than an April letter informing them that it would grant the petitions for reconsideration and an August letter stating that it intended to move forward with a rulemaking. Thus, the public release of any non-public government records will likely contribute to an understanding of the government activities and operations involved.

Importantly, a “fee waiver request should be evaluated based on the fact of the request and the reasons given by the requestor in support of the waiver, not on the possibility that the records may ultimately be determined to be exempt from disclosure.” *Judicial Watch*, 2005 WL 1606915, at *4 (internal citations omitted). Any EPA predictions about which records will ultimately be released are therefore irrelevant.

C. The disclosure will contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons.

For this requirement, the courts consider “the requestor’s ability and intent to effectively convey the information to the public.” *Judicial Watch*, 2005 WL 1606915, at *5; *see also CREW*, 481 F. Supp. 2d at 113-16. As documented in their original request, Public Interest Groups have shown that disclosure of the requested records will likely contribute to public understanding. They have demonstrated that disclosure will “contribute to the understanding of a reasonably broad audience of persons” and that they have the “ability and intention” to disseminate the disclosed records. 40 C.F.R. § 2.107 (l)(2)(iii); *see also Judicial Watch v. DOJ*, 365 F.3d 1108, 1126 (D.C. Cir. 2004). They have amply explained why they are requesting disclosure, what they will use the disclosed information for, why they are particularly well situated to disseminate information, and how they will disseminate information for use by the general public and their members.

In light of its substantial legal expertise, Earthjustice is well-equipped and prepared to analyze and evaluate the records it receives pursuant to FOIA requests and assess them in the context of the mandates of applicable statutes. Earthjustice has extensive outreach tools to publicize information received from FOIA requests, including its monthly electronic newsletter, which serves approximately 223,000 subscribers, and an active e-mail list of approximately 2 million people. Additionally, Earthjustice prints *Earthjustice Quarterly Magazine*, which includes feature-length articles on environmental issues and is mailed to over 100,000 supporters. Online, Earthjustice receives about 31,000 page views each month. Furthermore, over 1.2 million people

have signed up for Earthjustice e-mail action alerts. Action alerts highlight environmental issues and provide opportunity for public participation, and typically, 15,000 to 20,000 individuals respond to such alerts.

Waterkeeper Alliance, Inc. (“WKA”) publishes *Waterkeeper Magazine*, a magazine on water-related environmental and public health subjects of current interest, which has an annual circulation of 130,000.² *Currents* is WKA's electronic newsletter on water-related issues that is distributed by email to approximately 24,000 subscribers monthly and made available to the general public online. WKA sends weekly updates to over 330 local Waterkeeper Organizations and Affiliates, 176 of which are located within the United States, and these updates often include information on federal legislative and regulatory developments that might impact their work and be of interest to their members. WKA also issues press releases and participates in press conferences and interviews with reporters.

Environmental Integrity Project (“EIP”) uses public data obtained through FOIA requests to develop reports, media materials, and litigation briefs that educate the public and decision-makers, and achieve its objectives. For example, EIP, in coordination with the other Public Interest Groups and other partners, has released several reports documenting water pollution from coal-fired power plants.³ Most recently, EIP released a detailed report on the power plant wastewater loads, the adequacy of monitoring requirements in existing permits, the prevalence of overdue permit renewals, and the extent to which existing power plant discharges could meet the Steam Electric ELG rule’s new pollution limits.⁴

Sierra Club is the nation’s oldest and largest grassroots environmental organization, with more than 2.7 million members and supporters, including online activists and newsletter subscribers. Its website is highly trafficked and Sierra Club media and communications reach hundreds of thousands of people through an extensive digital communications network and online information system, print magazine, radio show, web videos, and news reports.⁵ Sierra Club’s Beyond Coal Campaign participates in dozens of regulatory proceedings each year, and communicates weekly with tens of thousands of citizens through reports, press releases, coalition meetings, and Sierra Club’s broader membership.⁶

With over one million members, volunteers, and seasoned professional staff, Clean Water Action (“CWA”) has led hundreds of successful campaigns to strengthen and preserve key drinking water protections and protect small streams and wetlands in dozens of states around the country.

² See <http://waterkeeper.org/magazines/>.

³ EIP et al., *Selling Our Health Down the River: Why EPA Needs to Finalize the Strongest Rule to Stop Water Pollution from Power Plants* (June 17, 2015), *available at* http://earthjustice.org/sites/default/files/files/Selling%20Our%20Health%20Down%20The%20River_0.pdf; Earthjustice et al., *EPA’s Blind Spot: Hexavalent Chromium in Coal Ash* (Feb. 1, 2011), *available at* <http://earthjustice.org/sites/default/files/CoalAshChromeReport.pdf>.

⁴ EIP, *Toxic Wastewater from Coal Plants* (Aug. 11, 2016), *available at* <http://www.environmentalintegrity.org/wp-content/uploads/2016/11/Toxic-Wastewater-from-Coal-Plants-2016.08.11-1-1.pdf>.

⁵ See <http://www.sierraclub.org/press-releases>; <http://www.sierraclub.org/sierra/green-life>; <http://www.sierraclub.org/blogs>.

⁶ See <http://content.sierraclub.org/coal/>

CWA disseminates information on its website by blogging and publishing monthly newsletters, reports, and scorecards on both state level and national issues.⁷ CWA is capable of making the information from this request available to at least one million people around the country, as well as to relevant members of Congress and other elected officials.

The size of the Public Interest Groups' members, subscribers, and audiences, as well as their intention to share information through the above-mentioned means, demonstrates that disclosure would reach a reasonably broad public audience and that the Public Interest Groups are entitled to a fee waiver. *Rossotti*, 326 F.3d at 1314; *cf. Carney v. United States Dep't of Justice*, 19 F.3d 807, 814 (2d Cir. 1994) (finding that a scholar seeking information for a dissertation with no guarantee of publishing still met the third criteria for public interest fee waiver).

To satisfy this requirement, the Public Interest Groups need not "outline a specific plan in addition to describing its methods of publication." *Judicial Watch*, 2005 WL 1606915, at *5. To do so would amount to "pointless specificity." *Id.* (internal quotation omitted). Courts have granted fee waivers for requesters with far less robust distribution capabilities than the Public Interest Groups in this case. *See, e.g., Center for Food Safety v. U.S. Dep't of Agriculture*, Civ. No. 04-1324 (RMU) (D.D.C. Feb. 7, 2005) (Memorandum Opinion overturning USDA's denial of fee waiver).

Since EPA first announced its reconsideration of the Steam Electric ELGs rule and postponement of its compliance deadlines, it has received significant critical scrutiny from members of the public and news media.⁸ Thus, the non-public records concerning this topic that the Public Interest Groups are requesting will attract interest from a broad audience of Americans.

D. The disclosure will contribute "significantly" to public understanding of government operations or activities, as compared to the level of understanding prior to the disclosure.

The Public Interest Groups' request seeks non-publicly available information that will enhance and contribute significantly to public understanding of the government operations and activities at issue. Disclosure of records concerning EPA reconsideration, and postponement of compliance deadlines of the Steam Electric ELGs rule will contribute significantly to public understanding of the scope, timing, and substance of EPA's reconsideration process. Additionally, disclosure of records reflecting EPA's communications with UWAG or SBA

⁷ See <https://www.cleanwateraction.org/news-updates>; <https://www.cleanwateraction.org/blog>.

⁸ *See, e.g.,* Brady Dennis, Washington Post, *Trump administration halts Obama-era rule aimed at curbing toxic wastewater from coal plants*, Apr. 13, 2017, available at https://www.washingtonpost.com/news/energy-environment/wp/2017/04/13/trump-administration-halts-obama-era-rule-aimed-at-curbing-toxic-wastewater-from-coal-plants/?utm_term=.b6c11be54f03; Michael Biesecker, Detroit News, *EPA to undo tougher pollution limits on coal plants*, Apr. 14, 2017, available at <http://www.detroitnews.com/story/news/nation/2017/04/14/epa-undo-tougher-pollution-limits-coalplants/100482394/>; Ian Johnston, The Independent, *Donald Trump's plan to allow coal plants to poison rivers faces legal challenge*, May 4, 2017, available at <http://www.independent.co.uk/news/world/americas/uspolitics/donald-trump-coal-power-plants-river-water-pollution-toxic-waste-us-environmental-protection-agency-a7717386.html>.

(and/or other outside entities) since informing them it would grant the petitions for reconsideration would contribute significantly to public understanding of the influence of outside entities on EPA's reconsideration process. Without EPA disclosure of such records, the public has no understanding of their nature, extent, and content.

When the FOIA request was first submitted, EPA had just proposed a rule to postpone the Steam Electric ELG rule's future compliance deadlines and begin a new rulemaking to reconsider the two most significant of the new standards for coal combustion wastewater. The basis for EPA's proposed postponement and reconsideration, and the extent to which EPA has been influenced in its decision by communications with or lobbying by the utility industry, are matters of clear public interest. The Public Interest Groups seek documents, currently shielded from public review, that relate to EPA's communications with the industry and other third parties about the Steam Electric ELGs rule and its proposed postponement and reconsideration. These documents would contribute "significantly" to the public's understanding of an important environmental matter of national relevance, and the basis for EPA's decision to postpone and reconsider compliance deadlines of a rule that would result in thousands of river miles that are safer to swim and fish in, and hundreds of cleaner water bodies that are vital drinking water sources.

The Public Interest Groups have previously used the release of FOIA documents to contribute "significantly" to public understanding of government operations and activities. Over the past several years, Earthjustice and its partners have published many reports and analysis documenting the growing public health threat from coal ash, the hazardous waste that remains after coal is burned.⁹ A significant amount of the data analyzed and information relied on in these coal ash reports and publications were obtained through FOIA requests. Furthermore, several of the reports were a collaboration with the other Public Interest Groups.¹⁰

WKA culminated its years-long effort to hold Kentucky coal mining companies accountable for falsifying thousands of water pollution reports. Using data obtained through FOIA and state public records requests, WKA identified a pattern of false reporting and exposed the issues to the public.¹¹

EIP routinely collects data through FOIA requests in order to analyze the data and make the information accessible to the general public through data-oriented reporting. For example, EIP recently made use of data obtained through FOIA requests to analyze the causes of, and potential solutions to, agricultural pollution issues.¹² One of EIP's primary focus areas is coal ash, and

⁹ See <https://earthjustice.org/features/campaigns/coal-ash-reports-and-publications>.

¹⁰ Earthjustice et al., *State of Failure: How States Fail to Protect Our Health and Drinking Water from Toxic Coal Ash* (Aug. 2011), available at http://earthjustice.org/sites/default/files/StateofFailure_2013-04-05.pdf; Earthjustice et al., *Coming Clean: What the EPA Knows About the Dangers of Coal Ash* (May 2009), available at <https://earthjustice.org/sites/default/files/library/reports/final-coming-clean-ejeip-report-20090507.pdf>.

¹¹ Waterkeeper Alliance, *Citizen Groups File Legal Action Against Frasure Creek Mining For Falsifying Pollution Reports*, Nov. 17, 2014, available at <http://waterkeeper.org/citizen-groups-file-legal-action-frasure-creek-mining-falsifying-pollution-reports/>; Michael Wines, New York Times, *Clean Mining a Deception in Kentucky, Groups Say*, Nov. 17, 2014, available at <https://www.nytimes.com/2014/11/18/us/clean-mining-a-deception-in-kentucky-groups-say.html>.

¹² EIP, *Water Pollution from Livestock in the Shenandoah Valley: Virginia's System of Manure Management Fails to Protect Waterways and Needs to be Strengthened* (Apr. 26, 2017), available at <http://www.environmentalintegrity.org/wp-content/uploads/2017/02/Shenandoah-Report.pdf>.

EIP has produced many reports on this topic using data from state and federal agencies. Prior to the promulgation of EPA's solid waste rule for coal ash ("CCR rule"), EIP prepared several "damage reports" documenting harm from unsafe coal ash disposal practices.¹³ Nearly all of the data analyzed in these reports was obtained through FOIA requests, and the damage reports became part of the EPA rulemaking record and provided important support for the CCR rule. Furthermore, EIP maintains an "Ashtracker" website that provides the public with access to detailed information about groundwater contamination near areas used to dispose of coal ash.¹⁴ The website uses a map-based interface to display monitoring wells and provide a visual analysis of groundwater quality data, and allows users to download the underlying data. The majority of the data on Ashtracker is obtained through FOIA requests.

Sierra Club has a strong record of contributing information acquired through FOIA requests to national news outlets, garnering extensive news coverage and public interest, as well as to its own press releases, contributing significantly to the public's understanding of government operations and activities.¹⁵ Most recently, Sierra Club obtained information through a FOIA request that revealed that, ahead of what would turn out to be a potentially record-breaking hurricane season, the National Weather Service had 216 vacant positions it could not fill due to a government wide hiring freeze imposed by the Trump administration.¹⁶

Last year, a CWA FOIA request revealed that the Texas Railroad Commission has let the petroleum industry inject oil and gas waste into groundwater for decades without the required federal approval.¹⁷ In addition to its own FOIA requests, CWA has used information obtained

¹³ EIP et al., *Out of Control: Mounting Damages from Coal Ash Waste Sites* (Feb. 24, 2010), *available at* http://www.environmentalintegrity.org/wp-content/uploads/2016/11/2010-02_Out_of_Control.pdf; EIP et al., *In Harm's Way: Lack of Federal Coal Ash Regulations Endangers Americans and their Environment* (Aug. 26, 2010), *available at* http://www.environmentalintegrity.org/wp-content/uploads/2016/11/2010-08_In_Harms_Way.pdf; EIP, *Toxic Waters Run Deep: Coal Ash Open Dumps Still Open for Business?* (June 23, 2011), *available at* http://www.environmentalintegrity.org/wp-content/uploads/2016/11/2011-06_Toxic_Waters_Run_Deep.pdf; EIP, *Risky Business: Coal Ash Threatens America's Groundwater Resources at 19 More Sites* (Dec. 12, 2011), *available at* http://www.environmentalintegrity.org/wp-content/uploads/2016/11/2011-12_Risky_Business.pdf; EIP, *TVA's Toxic Legacy: Groundwater Contaminated by Tennessee Valley Authority Coal Ash* (Nov. 2013), *available at* http://www.environmentalintegrity.org/wp-content/uploads/2016/11/2013-11_TVAs_Toxic_Legacy.pdf.

¹⁴ See <https://ashtracker.org/>.

¹⁵ Rene Marsh and Gregory Wallace, CNN, *More than 350 jobs at EPA unfilled during Trump hiring freeze*, April 13, 2017, *available at* <http://www.cnn.com/2017/04/13/politics/epa-hiring-freeze/index.html>; Lena H. Sun, The Washington Post, *Nearly 700 vacancies at CDC because of Trump administration's hiring freeze*, May 19, 2017, *available at* https://www.washingtonpost.com/news/to-your-health/wp/2017/05/19/nearly-700-vacancies-at-cdc-because-of-trump-administration-hiring-freeze/?utm_term=.258ec9537f78; Sierra Club, *Sierra Club Challenges Dirty and Dangerous Fossil Fuel Exports in Oregon*, *available at* <http://content.sierraclub.org/environmentallaw/lawsuit/2013/sierra-club-challenges-dirty-and-dangerous-fossil-fuel-exports-oregon>; Alexander Rony, Sierra Club, *Trump Admin Policies Leave 700 CDC Jobs Vacant*, May 19, 2017, *available at* <http://www.sierraclub.org/planet/2017/05/trump-admin-policies-leave-700-cdc-jobs-vacant>.

¹⁶ Dino Grandoni, The Washington Post, *The Energy 202: Trump's hiring freeze shrank National Weather Service staff before hurricanes hit*, Sept. 27, 2017, *available at* https://www.washingtonpost.com/news/powerpost/paloma/the-energy-202/2017/09/27/the-energy-202-trump-s-hiring-freeze-shrank-national-weather-service-staff-before-hurricanes-hit/59cabf8330fb0468cea81c01/?utm_term=.226f3b2a73ea.

¹⁷ Jeff Mosier, Dallas News, *Texas failed to get federal approval to inject oil and gas drilling waste into groundwater*, Aug. 26, 2016, *available at* <https://www.dallasnews.com/news/environment/2016/08/26/texas-failed-get-federal-approval-inject-oil-gas-drilling-waste-groundwater>; Jim Malewitz, Texas Tribune, *Texas Promised to*

through FOIA requests submitted by other organizations to publish reports¹⁸ and factsheets¹⁹ and submit legal petitions to EPA.²⁰ CWA also worked with Marketplace on a story, that relied in part on information obtained through FOIA requests submitted by other organizations, about EPA's study on the impacts of fracking on drinking water.²¹

Finally, several of the Public Interest Groups along with other partners published a report based in part on information obtained through FOIA requests regarding the 2015 Steam Electric ELGs rule.²² These previous efforts of the Public Interest Groups effectively displays how the Public Interest Groups have taken action to make sure that information obtained through FOIA disclosures contributed significantly to public understanding of government operations or activities.

E. The Public Interest Groups have absolutely no commercial interest in disclosure of the information.

As explained in our original request, the Public Interest Groups do not seek the requested records for any commercial use. *See* 40 C.F.R. § 2.107(b)(1) (definition of “commercial use request”). The Public Interest Groups do not have any commercial interest that would be furthered by the requested disclosure. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l)(1). As non-profit, public interest environmental and public health organizations, the Public Interest Groups do not have any commercial, trade, or profit interest. *See* 40 C.F.R. § 2.107(l)(3)(i). “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F. 3d at 1312 (internal citation omitted). The Public Interest Groups’ interest in obtaining the requested materials is to serve the public interest by disclosing non-public information about EPA reconsideration, and postponement of compliance deadlines of the Steam Electric ELGs rule and EPA’s communications with third parties regarding the postponement and reconsideration process. Release of the requested records will serve to inform

Track Oilfield Waste in Aquifers. It Didn't., Aug. 24, 2016, available at <https://www.texastribune.org/2016/08/24/texas-promised-34-years-ago-track-oilfield-waste-a/>; Clean Water Action, Texas Aquifer Exemptions: Ignoring Federal Law to Fast Track Oil & Gas Drilling (August 2016), available at <http://www.cleanwateraction.org/sites/default/files/docs/publications/Texas%20Aquifer%20Exemptions%20-%20Clean%20Water%20Action%20August%202016.pdf>.

¹⁸ Clean Water Action, Aquifer Exemptions: A first-ever look at the regulatory program that writes off drinking water resources for oil, gas and uranium profits (January 2015), available at <http://www.cleanwateraction.org/sites/default/files/docs/publications/Aquifer%20Exemptions%20-%20Clean%20Water%20report%201.6.15.pdf>.

¹⁹ Clean Water Action, Aquifer Exemptions: Prioritizing Fossil Fuel Production Over Drinking Water, available at <http://www.cleanwateraction.org/files/docs/publications/Aquifer%20Exemptions%20Fact%20Sheet%20-%20Clean%20Water%20Action%20Clean%20Water%20Fund.pdf>.

²⁰ *See* <http://www.cleanwateraction.org/files/SDWA%20Aquifer%20Exemption%20Petition%20-%20NRDC%20et%20al%20-%202016.pdf>.

²¹ Scott Tong and Tom Scheck, Marketplace, *EPA's late changes to fracking study downplay risk of drinking water pollution*, Nov. 30, 2016, available at <https://www.marketplace.org/2016/11/29/world/epa-s-late-changes-fracking-study-portray-lower-pollution-risk>; Scott Tong and Tom Scheck, Marketplace, *EPA reverses course, highlights fracking contamination of drinking water*, Dec. 13, 2016, available at <https://www.marketplace.org/2016/12/13/sustainability/epa-reverses-stance-fracking-drinking-water>.

²² EIP et al., *Closing the Floodgates: How the Coal Industry is Poisoning Our Water and How We Can Stop It* (July 23, 2013), available at <http://earthjustice.org/sites/default/files/ClosingTheFloodgates-Final.pdf>.

the public about this topic of interest to many, and will not advance any commercial, trade, or profit interests of the Public Interest Groups in any way.

III. Conclusion

For the reasons discussed above, the Public Interest Groups ask that EPA immediately grant a fee waiver for all records requested.

Sincerely,



Thomas Cmar
Earthjustice
(312) 257-9338
tcmar@earthjustice.org

Mychal Ozaeta
Earthjustice
(215) 717-4529
mozaeta@earthjustice.org

Submitted on behalf of:

Earthjustice
Waterkeeper Alliance, Inc.
Environmental Integrity Project
Sierra Club
Clean Water Action

Appendix A



August 4, 2017

VIA ELECTRONIC SUBMISSION

National Freedom of Information Officer
U.S. Environmental Protection Agency
<https://foiaonline.regulations.gov>

**RE: Freedom of Information Act Request Regarding Effluent Limitation
Guidelines for the Steam Electric Power Generating Point Source Category**

Dear National FOI Officer:

This is a request for information on behalf of Earthjustice, Waterkeeper Alliance, Inc., Environmental Integrity Project, Sierra Club, and Clean Water Action (collectively, "Public Interest Groups") pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Environmental Protection Agency's ("EPA") FOIA regulations, 40 C.F.R. § 2.107.

The Public Interest Groups also request a fee waiver for this request under 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107.

I. Records Requested

The Public Interest Groups request all records created, stored, or received since April 25, 2017 concerning EPA reconsideration, and postponement of compliance deadlines, of the "Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category" rule (the "Steam Electric ELGs rule") that was signed by the Administrator on September 30, 2015 and published in the Federal Register on November 3, 2015.

This request includes, but is not limited to, the following categories of records:

1. All records created, stored, or received by the EPA Administrator, any of the Administrator's staff, or the EPA Office of Water concerning reconsideration of the Steam Electric ELGs rule or postponement of its compliance deadlines;
2. All records reflecting communications between EPA (or the Department of Justice) and the Utility Water Act Group, the law firm Hunton & Williams LLP, and/or any other entity or individual representing an electric generating utility or the utility industry, concerning the Steam Electric ELGs rule, including reconsideration of the rule or postponement of its compliance deadlines; and

1101 LAKE STREET, SUITE 405B OAK PARK, IL 60634

T: 312.257.9338 TCMAR@EARTHJUSTICE.ORG WWW.EARTHJUSTICE.ORG

3. All records reflecting communications between EPA (or the Department of Justice) and the White House, the U.S. Small Business Administration, the Tennessee Valley Authority, or any other federal agency concerning the Steam Electric ELGs rule, including reconsideration of the rule or postponement of its compliance deadlines.

For purposes of this request, the term “records” means information of any kind, including, but not limited to, documents (handwritten, typed, electronic or otherwise produced, reproduced, or stored), letters, e-mails, facsimiles, memoranda, correspondence, notes, databases, drawings, graphs, charts, photographs, minutes of meetings, electronic and magnetic recordings of meetings, and any other compilation of data from which information can be obtained. As used herein, “and” and “or” shall be construed either conjunctively or disjunctively as required by the context to bring within the scope of these requests any information which might be deemed outside their scope by any other construction.

Further, for purposes of this request, the term “records” includes any personal email messages, telephone voice mails or text messages, and internet “chat” or social media messages, to the full extent that any such messages fall within the definition of “agency records” subject to FOIA, 5 U.S.C. § 552.

We remind you that FOIA requires that you respond within 20 working days of your receipt of this request, *see* 5 U.S.C. § 552(a)(6)(A)(i), and that that response must “at least indicate within the relevant time period the scope of the documents [you] will produce and the exemptions[, if any, you] will claim with respect to any withheld documents.” *Citizens for Responsibility and Ethics in Washington v. F.E.C.*, 711 F.3d 180, 182-83 (D.C. Cir. 2013).

We ask that you disclose this information as it becomes available to you without waiting until all of the communications and records have been assembled for the time period requested. The Public Interest Groups request electronic copies of the records whenever possible.

II. Claims of Exemption from Disclosure

If EPA regards any documents as exempt from required disclosure under the Freedom of Information Act, please identify each allegedly exempt record in writing, provide a brief description of that record, and explain the agency’s justification for withholding it. This explanation should take the form of a *Vaughn* index, as described in *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), and other related cases. If a document contains both exempt and non-exempt information, please provide those portions of the document that are not exempted from disclosure.

III. Fee Waiver

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107, the Public Interest Groups request that EPA waive all fees associated with responding to this request because the groups seek this information in the public interest and will not benefit commercially from this request. If EPA does not waive the fees entirely, the Public Interest Groups request that it reduce them to the extent possible.

FOIA provides that fees shall be reduced “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”¹ EPA’s FOIA regulations contain an identical requirement.² The U.S. Department of Justice (DOJ) has identified six factors to assess whether a requester is entitled to a waiver of fees under FOIA, and the D.C. Circuit and other Courts of Appeals reference and apply these factors.³ These factors are:

- A. Disclosure of the Information ‘is in the Public Interest Because it is Likely to Contribute Significantly to Public Understanding of the Operations or Activities of the Government.’
- (1) **The subject of the request:** Whether the subject of the requested records concerns ‘the operations or activities of the government’;
- (2) **The informative value of the information to be disclosed:** Whether the disclosure is ‘likely to contribute’ to an understanding of government operations or activities;
- (3) **The contribution to an understanding of the subject by the general public likely to result from disclosure:** Whether disclosure of the requested information will contribute to ‘public understanding’; and
- (4) **The significance of the contribution to public understanding:** Whether the disclosure is likely to contribute ‘significantly’ to public understanding of government operations or activities.

¹ 5 U.S.C. § 552(a)(4)(A)(iii).

² 40 C.F.R. § 2.107.

³ See, e.g., Stephen J. Markman, U.S. Dep’t of Justice, FOIA Update, Vol. VIII, No. 1, New Fee Waiver Policy Guidance at 3-10 (1987), *available at* http://www.justice.gov/oip/foia_updates/Vol_VIII_1/viii1page2.htm; *Judicial Watch, Inc. v. U.S. Dep’t of Justice*, 365 F.3d 1108, 1126 (D.C. Cir. 2004) (stating that “for a request to be in the ‘public interest,’ four criteria must be satisfied,” and citing agency’s multi-factor fee waiver regulation).

B. Disclosure of the Information ‘is Not Primarily in the Commercial Interest of the Requester.’

- (1) **The existence and magnitude of a commercial interest:** Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so
- (2) **The primary interest in disclosure:** Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is ‘primarily in the commercial interest of the requester.’⁴

The Public Interest Groups’ request complies with each of the factors agencies weigh in a fee waiver determination, as demonstrated below. If this information is not sufficient to justify a fee waiver, please contact us for further documentation before deciding upon the waiver request.

A. Public Interest Factor

The disclosure of this information is in the “public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.”⁵ The Public Interest Groups’ request complies with each of the criteria DOJ has identified for the public interest factor.

i. The request concerns the operations or activities of the government.

The Public Interest Groups seek information related to EPA’s reconsideration and postponement of compliance deadlines of the Steam Electric ELGs rule. Since EPA is an arm of the federal government, such EPA records plainly concern “operations or activities of the government.”⁶

ii. The disclosure is “likely to contribute” to an understanding of government operations and activities.

The records the Public Interest Groups have requested bear upon EPA’s pending internal review process concerning reconsideration of the Steam Electric ELGs rule and postponement of its compliance deadlines, as well as any communications between EPA and outside entities about those matters. On March 24, 2017, the Utility Water Act Group (“UWAG”) submitted a petition to EPA for reconsideration of the Steam Electric ELGs rule.⁷ The U.S. Small Business

⁴ Markman, *supra* note 3.

⁵ See 40 C.F.R. § 2.107(l)(1).

⁶ See *id.* § 2.107(l)(2)(i).

⁷ See <https://www.regulations.gov/document?D=EPA-HQ-OW-2009-0819-6478>.

Administration (“SBA”) submitted a second petition for reconsideration on April 5, 2017.⁸ On April 12, 2017, EPA informed UWAG and SBA that it would reconsider the rule and take action to postpone the rule’s compliance deadlines under the Administrative Procedure Act, 5 U.S.C. § 705 (“APA”).⁹ EPA subsequently published the APA action in the Federal Register, 82 Fed. Reg. 19,005 (Apr. 25, 2017), and later also published a proposed rule to postpone the compliance deadlines, on which it accepted public comment, 82 Fed. Reg. 26,017 (June 6, 2017).

However, it is not currently public knowledge as to the scope, timing, or substance of EPA’s reconsideration process, nor has EPA made public any communications with UWAG or SBA (and/or other outside entities) since informing them it would grant the petitions for reconsideration. Thus, disclosure is “likely to contribute” to public understanding of government operations and activities.¹⁰

iii. The information will contribute to the understanding of a reasonably broad audience of persons interested in the subject.

This information will contribute to the understanding of a reasonably broad audience of persons interested in the subject.¹¹ The general public is already following issues related to water pollution from coal-fired power plants, which has frequently been the focus of investigative reports by members of the media.¹² Since EPA first announced its reconsideration of the Steam Electric ELGs rule and postponement of its compliance deadlines, it has received significant critical scrutiny from members of the public and news media.¹³ Thus, the non-public

⁸ <https://www.regulations.gov/document?D=EPA-HQ-OW-2009-0819-6481>.

⁹ <https://www.regulations.gov/document?D=EPA-HQ-OW-2009-0819-6482>.

¹⁰ See 40 C.F.R. § 2.107(l)(2)(ii).

¹¹ See *id.* § 2.107(l)(2)(iii).

¹² See, e.g., Heather Rogers, ProPublica, *Lobbyists Bidding to Block Government Regs Set Sights on Secretive White House Office*, July 31, 2014, available at <http://www.propublica.org/article/lobbyists-bidding-block-government-regs-sights-set-secretive-white-house>; Bill Chameides, Nat’l Geographic Energy Blog, *Coal Ash Ponds: How Power Companies Get a ‘Bypass’ on Regulations Against Pollution*, Mar. 24, 2014, available at <http://energyblog.nationalgeographic.com/2014/03/24/coal-ash-ponds-how-power-companies-get-a-bypass-on-regulations-against-pollution/>; Charles Duhigg, N.Y. Times, *Cleansing the Air at the Expense of Waterways*, Oct. 12, 2009, available at <http://www.nytimes.com/2009/10/13/us/13water.html>.

¹³ See, e.g., Brady Dennis, Washington Post, *Trump administration halts Obama-era rule aimed at curbing toxic wastewater from coal plants*, Apr. 13, 2017, available at https://www.washingtonpost.com/news/energy-environment/wp/2017/04/13/trump-administration-halts-obama-era-rule-aimed-at-curbing-toxic-wastewater-from-coal-plants/?utm_term=.b6c11be54f03; Michael Biesecker, Detroit News, *EPA to undo tougher pollution limits on coal plants*, Apr. 14, 2017, available at <http://www.detroitnews.com/story/news/nation/2017/04/14/epa-undo-tougher-pollution-limits-coal-plants/100482394/>; Ian Johnston, The Independent, *Donald Trump’s plan to allow coal plants to poison rivers faces legal challenge*, May 4, 2017, available at <http://www.independent.co.uk/news/world/americas/us-politics/donald-trump-coal-power-plants-river-water-pollution-toxic-waste-us-environmental-protection-agency-a7717386.html>.

records concerning this topic that the Public Interest Groups are requesting will attract interest from a broad audience of Americans.

The Public Interest Groups are particularly able to ensure that the information requested will be disseminated to the general public.

Earthjustice is a non-profit public interest law organization dedicated to protecting the magnificent places, natural resources, and wildlife of this earth, and to defending the right of all people to a healthy environment.¹⁴ Earthjustice has made safeguarding the nation's waters one of its top priorities. To this end, Earthjustice has brought numerous lawsuits to enforce the Clean Water Act in the public interest. In light of its substantial legal expertise, Earthjustice is well-prepared to analyze and evaluate the records we receive pursuant to this request and assess them in the context of the statutory mandates of the Clean Water Act. In addition, Earthjustice has the "ability and intention" to convey this information to the public.¹⁵ Earthjustice can publicize information received from this request in its monthly electronic newsletter, which serves approximately 223,000 subscribers, and it can utilize its online action alert system to urge members of the public to contact policymakers and ask them to take action based on information received from this request; typically, 15,000 to 20,000 individuals respond to such alerts. Earthjustice's communications staff can disseminate newsworthy information obtained from this request to the media.

Waterkeeper Alliance ("WKA") has 178 local affiliates throughout the United States. Communities nationwide look to Waterkeeper Alliance for critical information concerning, among other things, sources of pollution in their local waterways. WKA has a proven ability to disseminate information quickly and effectively through various communication channels including publications, public interest litigation, educational programs, media initiatives, and its website. Waterkeeper Alliance's website, www.waterkeeper.org, is updated regularly and draws thousands of visits per month. WKA also publishes WATERKEEPER, a magazine on water-related environmental and public health subjects of current interest, which has an annual circulation of 130,000. "Currents" is WKA's electronic newsletter on water-related issues that is distributed by email to approximately 24,000 subscribers monthly and made available to the general public online. WKA also issues press releases and participates in press conferences and interviews with reporters. WKA routinely uses FOIA to obtain information from federal agencies that WKA's legal and scientific experts analyze in order to inform the public about a variety of issues, including water pollution, drinking water safety, and energy policy. WKA has demonstrated its ability to analyze and distribute information to a broad audience of interested people.

The Environmental Integrity Project ("EIP") is a non-profit, non-partisan public interest law organization that was founded to advocate for the effective enforcement of environmental laws

¹⁴ See <http://earthjustice.org/about>.

¹⁵ See, e.g., Markman, *supra* note 3.

that pertain to coal-fired power plants and other large sources of pollution. EIP's three objectives are to: (1) provide objective analysis of how the failure to enforce or implement environmental laws increases pollution and affects the public's health; (2) hold federal and state agencies, as well as individual corporations, accountable for failing to enforce or comply with environmental laws; and (3) help local communities in key states obtain the protection of environmental laws. EIP participates in federal and state rulemakings related to water pollution from the utility industry and brings lawsuits to enforce the Clean Water Act on behalf of community and environmental groups that are harmed by coal plant pollution. In addition, EIP uses public data to develop reports, media materials, and litigation briefs that educate the public and decision-makers, and achieve its objectives. For example, EIP, in coordination with the other Public Interest Groups and other partners, has released several reports documenting water pollution from coal-fired power plants.¹⁶ Most recently, EIP released a detailed report on the power plant wastewater loads, the adequacy of monitoring requirements in existing permits, the prevalence of overdue permit renewals, and the extent to which existing power plant discharges could meet the Steam Electric ELG rule's new pollution limits.¹⁷ EIP's reports are published on its website.

The Sierra Club is the nation's oldest and largest grassroots environmental organization, with more than 2.7 million members and supporters, including online activists and newsletter subscribers. Its website is highly trafficked and Sierra Club media and communications reach hundreds of thousands of people through an extensive digital communications network and online information system, print magazine, radio show, web videos, and news reports.

Clean Water Action is a non-profit, non-partisan public interest organization. One of the nation's largest grassroots environmental organizations, it was founded to protect the environment, health, economic well-being, and community quality of life by promoting safe water and preventing health threatening pollution. Clean Water Action has continuously worked to strengthen and preserve key drinking water protections and protect small streams and wetlands. With over one million members, Clean Water Action has led hundreds of successful campaigns in dozens of states around the country. Clean Water Action disseminates information on its website by blogging, publishing monthly newsletters, reports, and scorecards

¹⁶ EIP et al., *Selling Our Health Down the River: Why EPA Needs to Finalize the Strongest Rule to Stop Water Pollution from Power Plants* (June 17, 2015), *available at* http://earthjustice.org/sites/default/files/files/Selling%20Our%20Health%20Down%20The%20River_0.pdf; EIP et al., *Closing the Floodgates: How the Coal Industry is Poisoning Our Water and How We Can Stop It* (July 23, 2013), *available at* http://www.environmentalintegrity.org/news_reports/07_23_2013.php; EIP et al., *In Harm's Way: Lack of Federal Coal Ash Regulations Endangers Americans and their Environment* (Aug. 26, 2010), *available at* http://www.environmentalintegrity.org/news_reports/08_26_10.php; Earthjustice et al., *EPA's Blind Spot: Hexavalent Chromium in Coal Ash* (Feb. 1, 2011), *available at* <http://www.environmentalintegrity.org/documents/CoalAshChromeReportFINAL.pdf>.

¹⁷ EIP, *Toxic Wastewater from Coal Plants* (Aug. 11, 2016), *available at* <http://www.environmentalintegrity.org/wp-content/uploads/2016/11/Toxic-Wastewater-from-Coal-Plants-2016.08.11-1-1.pdf>.

on both state level and national issues. The organization is therefore capable of making the information from this request available to at least one million people around the country, as well as to relevant members of Congress and other elected officials.

The Public Interest Groups have the ability to digest and quickly disseminate information gleaned from FOIA requests to the general public. The Public Interest Groups will make any newsworthy information or documents received in response to this request publicly available and will use them as the bases for public comments and further action regarding these proposed permit renewals. Thus, the Public Interest Groups are uniquely well positioned to analyze and publicize the requested information.

iv. The information will contribute “significantly” to public understanding of government operations or activities.

The information the Public Interest Groups seek will contribute “significantly” to the ongoing public conversation about pollution from coal-fired power plants.¹⁸ None of the materials the groups have requested are now widely known (if they have been made public at all), yet they are essential to the public’s understanding of EPA’s reconsideration of the Steam Electric ELGs rule or postponement of its compliance deadlines, or any communications with outside entities concerning those issues. The extent to which EPA is actively reconsidering portions of the rule, and/or communicating with outside entities about them, is not currently public information. As discussed above, the Public Interest Groups will make any newsworthy information or documents received in response to this request publicly available and will use them as the bases for public advocacy, including in any future public proceedings concerning the Steam Electric ELGs rule. Releasing this information will, thus, significantly enhance public understanding of any EPA activities concerning reconsideration of the Steam Electric ELGs rule or postponement of its compliance deadlines.

B. Commercial Interest Factor

Public Interest Groups are non-profit organizations with no commercial, trade, or profit interests in the requested information. Public Interest Groups seek to use this information solely to inform the public and to support advocacy efforts around protecting human health and the environment through effective Effluent Limitations Guidelines and standards. Thus, there is no relevant commercial interest here, and the request is entirely in the public interest.

For all of the foregoing reasons, a fee waiver is warranted here under 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107. If EPA does not believe that the above information is sufficient to justify a fee waiver, please contact us for further documentation before deciding upon the waiver request.

¹⁸ See 40 C.F.R. § 2.107(l)(2)(iv).

Thank you for your assistance processing this request. Please contact me at the email or telephone number below if you have any questions or concerns about this request for information.

Sincerely,

A handwritten signature in dark ink, appearing to read 'TCmar', is positioned above a solid horizontal line.

Thomas Cmar
Earthjustice
(312) 257-9338
tcmar@earthjustice.org

Submitted on behalf of:

Earthjustice
Waterkeeper Alliance, Inc.
Environmental Integrity Project
Sierra Club
Clean Water Action

Appendix B



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENVIRONMENTAL INFORMATION

SEP 15 2017

Mr. Thomas Cmar
Earthjustice
1101 Lake Street, Suite 405B
Oak Park, IL 60301

RE: Request Number EPA-HQ-2017-010217

Dear Mr. Cmar:

This is in response to your fee waiver request in connection with the above referenced Freedom of Information Act request.

We have reviewed your submission and based on the information provided, we are denying your request for a fee waiver. You have failed to demonstrate that the release of the information requested significantly increases the public understanding of government operations or activities. As a result of you failing to meet the above criteria, accordingly, there is no need to address the remaining prongs of the fee waiver criteria. The Office of Water (OW) will be responding to your information requests. You have been placed in the "other" fee category and will be charged for the costs of search time and duplication excluding the first two hours of search time and the first 100 pages of duplication. If the estimated costs exceed \$25.00, OW will contact you regarding the cost of processing your requests and seek an assurance of payment. They will be unable to process your requests until they receive your assurance of payment.

You may appeal this denial for a fee waiver by email at hq.foia@epa.gov, or by mail to the National Freedom of Information Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue. If you are submitting your appeal by hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001. Your appeal must be in writing, and it must be received no later than 90 calendar days from the date of this letter. The Agency will not consider appeals *received* after the 90-calendar-day limit. Appeals received after 5:00 pm EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope,

if applicable, should be marked "Freedom of Information Act Appeal." Additionally, you may seek dispute resolution services from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD 20740-6001; email, ogis@nara.gov; telephone, (202) 741-5770 or (877) 684-6448; or fax, (202) 741-5769.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry F. Gottesman", written over the word "Sincerely,".

Larry F. Gottesman
National FOIA Officer

Exhibit H



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF
GENERAL COUNSEL

November 6, 2017

Thomas Cmar
Earthjustice
1101 Lake Street, Suite 405B
Oak Park, IL 60301

Re: Freedom of Information Act Appeal No. EPA-HQ-2018-000582 (Request No. EPA-HQ-2017-010217)

Dear Mr. Cmar:

I am responding to your October 13, 2017 fee waiver appeal filed on behalf of Earthjustice, Waterkeeper Alliance Inc., Sierra Club and Clean Water Action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. You appealed the September 15, 2017 decision of Larry Gottesman of the U.S. Environmental Protection Agency (EPA or Agency) to deny your request for a fee waiver. You seek a waiver of all fees associated with your FOIA request submitted on August 4, 2017 for certain external communications concerning reconsideration and postponement of compliance deadlines of the "Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category" rule, as more fully described in your request. EPA's decision denying your fee waiver request stated that "[y]ou have failed to demonstrate that the release of information requested significantly increases public understanding of government operations or activities."

I have carefully considered your requests for a fee waiver, EPA's initial denial, and your appeals. Based on the justifications provided to EPA in your appeal letter, I have concluded that your appeal of the denial of your request for a complete waiver of fees should be, and is, granted.

The statutory standard for evaluating fee waiver requests is whether "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the [Federal] government; and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). The EPA's regulations at 40 C.F.R. § 2.107(l)(2) and (3) establish the same standard. The EPA must consider four factors to determine whether a request is in the public interest: (1) whether the subject of the requested records concerns the operations or activities of the Federal government; (2) whether the disclosure is likely to contribute to an understanding of government operations or activities; (3) whether the disclosure is likely to contribute to public understanding of the public – a reasonably broad audience of persons interested in the subject matter; and (4) whether the disclosure is likely to contribute significantly to public understanding of government operations or activities. 40 C.F.R. § 2.107(l)(2). The EPA must consider two factors to determine whether a request is primarily in the commercial interest of the requester: (1) whether the

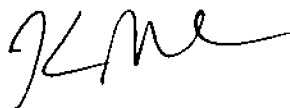
Mr. Thomas Cmar
Appeal No. EPA-HQ-2018-000582
Page 2 of 2

requester has a commercial interest that would be furthered by the requested documents; and (2) whether any such commercial interest outweighs the public interest in disclosure. 40 C.F.R. § 2.107(l)(3).

I find that you have met the above standard for this request, and your appeal should be granted. This determination does not entitle you to future fee waivers for subsequent records requests. See Judicial Watch, Inc., v. DOJ, No.99-2315, 2000 WL 33724693, at *5 (D.D.C. Aug. 17, 2000). The EPA will evaluate any future request for a fee waiver on a case by case basis, using all facts available at the time and in light of the nature and circumstances of the future request. This fee waiver also does not apply to materials that are already publicly available.

This letter constitutes the EPA's final determination on this matter. Please call Lynn Kelly at (202) 564-3266 or contact her at kelly.lynn@epa.gov if you have any questions regarding this determination.

Sincerely,

A handwritten signature in black ink, appearing to read 'K Miller', is positioned above the typed name.

Kevin Miller
Assistant General Counsel
General Law Office

cc: Larry Gottesman, HQ Freedom of Information Office